

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00286/2013

Reserved on : 11.02.2020

Jodhpur, this the 20th February, 2020

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Hon'ble Ms Archana Nigam, Administrative Member

Pabudan Singh S/o Shri Vijay Singh, aged about 70 years, R/o VPO Jullyasar, Tehsil Laxmangarh, Distt. Sikar, presently R/o Near Matki Choraha, BJS colony, Jodhpur (Raj). Last employed as Meson Grade-III under the office of IOW (Railway), Northern Western Railway, Ratangarh, Distt. Churu.

.....Applicant

By Advocate : Mr S.K. Malik.

Versus

1. Union of India through General Manager (Personnel), Northern Western Railway, Jaipur.
2. Divisional Railway Manager (Personnel), Northern Western Railway, Bikaner.
3. Divisional Personnel Officer, Northern Western Railway, Bikaner.
4. Assistant Engineer, Northern Western Railway, Ratangarh, Distt. Churu.

.....Respondents

By Advocate : Mr Darshan Jain proxy counsel for Mr Vinay Jain.

ORDER

Per Smt. Hina P. Shah

The present Original Application has been filed under Section 19 of the Administrative Tribunals Act seeking following reliefs:

1. That this original application may kindly be allowed with costs; and
2. The respondents may kindly be directed to grant the applicant the benefits of ACP on the date it came into force, i.e. with effect from 01.10.1999; and
3. That the respondents may kindly be directed to give all the consequential benefits to the applicants applicable to him including revision of pension; and
4. That the respondents may kindly be directed to compensate the applicant for his long battle for redressal of his grievance.
5. Any other relief which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case, may kindly be passed in favour of the applicant and against the respondents.

2. Brief facts of the case are that the applicant was initially appointed as Khalasi on 25.12.1958 and subsequently, he was confirmed on 1.09.1964. Thereafter, he officiated on the post of Mason on 8.12.1975 and he was regularized on the post of Mason Grade III vide order dated 04.05.1990 (Annexure A-3) . It is the case of the applicant that on introduction of ACP Scheme in the year 1999, he should have been granted the benefits ACP once in 1999, but the respondents did not do so. However, he was pursuing the said issue for grant of benefits of ACP Scheme with the respondents regularly , but no heed was paid by them. He thereafter retired on 1.10.2000 and he was sanctioned pension @ Rs.2315/- p.m. He sent a representation dated 31.03.2008 (Annexure A-9) and served a legal notice dated 7.09.2009 (Annexure A-10) to the respondents. However, the respondents vide Annexure A-1 dated 18.09.2009 informed the respondent

no.3 that since he is already getting more pay than that of the post of Helper Khalasi, he is not entitled for the benefits of ACP. Not being satisfied by the said remarks, Applicant again sent a legal notice dated 25.06.2013(Annexure A-11) to the respondents but the respondents have still not granted him the benefits of ACP Scheme. Therefore, being aggrieved by the illegal and arbitrary action of the respondents, the Applicant has filed the present OA.

3. The Respondents have filed their reply raising preliminary objection. It is stated by them the applicant is challenging the letter dated 18.09.2009. He has retired from service on 30.09.2000 and has filed the present OA in 2013 claiming benefit of ACP Scheme. It is further stated that applicant was already replied vide letter dated 18.09.2009 (Annexure A-1)and respondents also replied to his legal notice vide letter dated 10.07.2013 (Annexure R-1). The present OA is grossly barred by limitation as per Section 21 of Administrative Act,1985 and therefore, the present OA deserves to be dismissed. It is further stated that even on merits, the applicant has no case. As per the instructions of the Railway Board under the Scheme of ACP, the financial benefit was to be provided to the employee who has completed 12 years and 24 years of service. The respondents state that the Applicant was already granted higher grade with effect from 4.02.1975 in grade of Rs.260-400 and the same can be perused from the details of the service book. Therefore, applicant is not entitled for the benefits of ACP Scheme. It is further added that the applicant has failed to submit how he is entitled to get the benefits of the ACP Scheme when he is already getting higher grade. Respondents thus state that the applicant is not entitled for any relief and the present OA deserves to be dismissed.

4. Heard Shri. S.K. Malik, learned counsel for the applicant and Shri. Darshan Jain proxy counsel for Shri Vinay Jain, learned counsel for the respondents.

5. Learned counsel for the applicant reiterated his stand taken in reply. He further added that since the applicant was appointed on the post of Khalasi as a direct recruit, he is entitled to get ACP benefits for two financial upgradations because no regular promotions during 12 and 24 years of service has been availed by him. Therefore, present OA deserves to be allowed with a direction to the respondents to grant benefits of ACP Scheme to the applicant. He further stated that as per point numbers 14 and 15 of the ACP Scheme for Railway Servants dated 1.10.1999, the applicant is fully entitled for benefits of ACP Scheme as the said Scheme is a safety net to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. He further stated that there is no question of delay and laches as benefits under the ACP is financial upgradation and not promotion, therefore, the same is a recurring cause of action. Hence, issue of limitation is no bar for grant of financial benefits as per entitlement of the applicant.

6. On the other hand, learned counsel for the respondents reiterated their stand on limitation while raising preliminary objections in the reply. He further submits that the applicant is otherwise also not entitled for any relief as he is not entitled for grant of financial benefits under ACP Scheme. He submitted that the applicant was initially appointed as substitute Khalasi on 25.12.1958 and thereafter, he was promoted as Mason in grade of Rs.260-400/1500-3050-4590 on 4.02.1975 on temporary basis. Thereafter, he was regularized as Mason Grade III on 4.05.1990. He retired on 30.09.2000 on attaining age of superannuation. At the time of his retirement he was paid all the retirement benefits

to which he was entitled. The respondents had already clarified that the applicant was already getting higher grade on promotion which was provided to him on 4.02.1975 as Mason Grade - III in grade of Rs.260-400/900-1500/3050-4590 on TLA and he was regularized as Mason Grade-III on 4.05.1990. Therefore, as per the instructions on the ACP Scheme of 1.10.1999, the applicant is not entitled for financial benefits as the applicant was already getting higher pay.

7. We have considered the arguments advanced by the parties and perused the material available on record.

8. After hearing both the parties, the actual matrix of the case is that the applicant is claiming grant of ACP benefits w.e.f 1.10.1999, i.e. the date from which the Scheme came into force with all consequential benefits including revision of pay, pension etc. The claim of the applicant is that he is direct recruit on the post of Khallasi, therefore, he is entitled to get two financial upgradation under ACP Scheme introduced by the Railways w.e.f. 01.10.1999. With regard to the issue of limitation, applicant's contention is that since pay fixation is recurring cause of action, therefore, present OA is not barred by limitation. On the other hand, respondents contention is that the present application is barred by limitation. Respondents' contention on merits is that the applicant has already taken higher grade on promotion which was provided to him on 04.02.1975 as Mason Grade-III in grade of Rs 260/400/950-1500-3050-4590 on TLA and he was regularized as Mason Grade-III on 04.05.1990, therefore, applicant is not eligible for financial benefits under ACP Scheme as applicant was already getting higher grade.

9. We have given our thoughtful consideration to contentions raised by the parties. We noticed that ACP Scheme in Railways came into force w.e.f. 01.10.1999 and applicant stood retired from service after attaining the age of superannuation on 30.09.2000. Thereafter, applicant submitted representation to the respondents on 31.03.2008 (Annex. A/9) followed by legal notice in the next year dated 07.09.2009 (Annex. A/10) claiming upgradation under ACP Scheme. The claim of the applicant was denied by the respondents vide impugned order dated 18.09.2009 (Annex. A/1). Hence, applicant's claim that financial upgradations are recurring cause of action, therefore, limitation is no bar cannot be accepted as alleged right of the applicant for financial upgradation under ACP Scheme had been denied by the respondents by order dated 18.09.2009 (Annex. A/1). In our considered view, order impugned denying the claim of the applicant finally passed by the respondents on 18.09.2009 is a speaking order, therefore, no recurring cause of action available to the applicant thereafter. Even legal notice dated 25.06.2013 served subsequently also does not revive the same. The applicant not only raised the issue before the respondents for the first time in the year 2008, i.e. after lapse of almost 09 years of introduction of ACP Scheme by the respondents, but also approached after more than 04 years of denial of his claim by the respondents vide impugned order dated 18.09.2009. The applicant approached this Tribunal after lapse of almost 14 years as ACP Scheme was introduced w.e.f. 10.09.1999 and as respondents finally denied claim of the applicant in the year 2009, no more recurring cause of action available to the applicant. Accordingly, we conclude that after passing of impugned order, no recurring cause available to the applicant and there is no application made by the applicant showing sufficient cause for not making the application within stipulated time as per Section 21 of Administrative Tribunals Act,

1985. Therefore, present original application is filed beyond the period of limitation and thus, the same is liable to be dismissed on the ground of delay.

10. Accordingly, OA is dismissed with no order as to costs.

[Archana Nigam]
Administrative Member

[Hina P. Shah]
Judicial Member

Ss/-