

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A. NO. 47 OF 2004
CUTTACK, this the 18th day of January, 2005

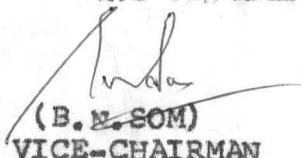
LAXMAN & Laxman Pradhan. Applicant.

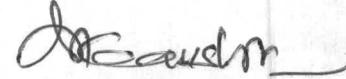
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Union of India & Ors. Respondents.

FOR INSTRUCTIONS

1. WHETHER it be referred to the reporters or not? *yes*
2. WHETHER it be circulated to all the Benches of *yes* the Central Administrative Tribunal or not?


(B. N. SOM)
VICE-CHAIRMAN


(J. K. KAUSHIK)
Judicial Member

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

O.A. NO. 47 OF 2004
Cuttack, this the 18th day of January, 2005

CORAM:

THE HONOURABLE MR. B. N. SOM, VICE-CHAIRMAN
A N D
THE HON'BLE MR. J. K. KAUSHIK, JUDICIAL MEMBER.

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LAXMAN @ Laxman Pradhan,
S/o. Late Mani Pradhan,
Aged about 62 years,
Village- Krushnachandrapur,
Post: Seragada Mukundpur,
PS: Dharmasala,
Dist. Jajpur,
Retired Trolleyman,
Engineering (Com.), S.E. Railway,
(now E.C. Railway).

APPLICANT.

By legal practitioner: M/s. N. R. Routray, S. Misra, Advocates.

-Versus-

1. Union of India represented through the General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Dy. Chief Personnel Officer (Con.), East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Chief Administrative Officer (Con.), East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. F.A. & C.A.O (Con.), East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda. ... RESPONDENTS.

By legal practitioner: M/s. S. K. Ojha, H. M. Das, Addl. St. Counsel.

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Shri Laxman @ Laxman Pradhan has been compelled to invoke the jurisdiction of this Bench of the Tribunal almost for getting the benefits under the very scheme framed by the Respondents Department itself and has prayed for a direction to grant him the benefits of second financial upgradation under the ACP Scheme issued in December, 1999 with a direction to revise the pensionary benefits and payment of arrears alongwith interest at the rate of 12 per cent per annum.

2. We have heard the learned counsel for the parties and have carefully perused the pleadings and records of this case.

3. The factual matrix of this case is at a very narrow compass. The Applicant came to be initially engaged in the year 1966 in the South Eastern Railway. His service came to be regularised w.e.f. 1-4-1973 on the post of Gangman. He was, subsequently, promoted to the post of Trolleyman from which he retired on completion of the age of superannuation on dated 30.06.2001; thereby completing over 28 years of regular service. As per the recommendations of the Vth Pay Commission, Financial Upgradation Scheme popularly known as 'ACP Scheme' came to be introduced vide Railway Board's Circular dated 01.10.1999 at Annexure-A/1. As per the said scheme, two financial upgradations have been provided i.e. on completion of 12 years and 24 years of service. Certain conditions are required to be fulfilled for release of the said benefits under the ACP scheme. The Applicant has completed over 28 years of service and he became entitled to second financial upgradation w.e.f. 1.10.1999, i.e. the date when the scheme was given effect to. The Applicant represented in the matter but of no avail. This Original Application has been filed on multiple grounds mentioned in para-5 and its sub-paras.

4. As regards the variances, the Respondents have not denied the same. However, they have averred that it is for the Applicant to prove the same. It has been averred that as per the Pension Rules, no interest on gratuity is payable. It is further averred

that the service-sheet of the Applicant has been transmitted to the Senior D.F.M., South Eastern Railway for disbursement of pension and after collecting the entire records, it will be placed before the constituted committee for examining the entitlement of the second ACP benefits and other aspect of the matter and for which about eight months time thereafter needed. The delay caused in the matter is neither intentional nor deliberate. The averments made in regard to the representation are not correct. The case of the Applicant shall be examined by the Committee and they may be granted eight months time i.e. upto the end of July, 2005 to examine the case of the Applicant for its finalisation.

5. A short rejoinder-affidavit has been filed on behalf of the Applicant almost refuting the contentions raised in the counter-reply.

6. Learned counsel for the Applicant has reiterated the facts and grounds enunciated in the pleadings and has submitted that the ACP scheme came in existence as early as 1.10.1999 and the Applicant remained in service upto 30.06.2001. It was not considered expedient by the Respondents to extend the due benefits to him and now certain vague averment has been made in the reply that the matter is still under consideration. On the other hand learned Counsel for the Respondents has submitted that the defence of the Respondents has been set out in the reply and nothing more was needed. He has

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further submitted that the Respondents are sincerely considering the case of the Applicant and in case the Committee finds him fit, the due benefits shall be extended to him but, for that some more time is needed.

7. We have considered the rival submissions put forth on behalf of both the parties. As far as the factual aspect of the matter is concerned, there is hardly any dispute. However, we are little surprised as to how feebly the Respondents are trying to escape from their responsibility. They have replied in a most casual manner that it is for the applicant to produce documents in support of his contentions. Respondents on the other hand say that the records are being routed to the competent authority and then consideration will be made. We are sad to notice, rather feel dismayed, the way the Respondents are dealing with the fundamental rights of the Applicant in particular and others in general. The scheme definitely came into existence w.e.f. 1.10.1999 and the Applicant did remain in service for almost one year and nine months thereafter. No reason is forthcoming as to why he was not extended his due benefits during his service period. Equally worst is the position for the subsequent period.

8. Counter is coined in such a language that it gives an impression that as if it is not a counter but an application for extension of time. We expected that the Respondents shall help this Court for imparting justice. But it pains us to point out that the Respondents

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have utterly failed to discharge their obligation.

9. The agony compels us to say a little more. Respondents have framed a scheme and the same is meant for grant of certain benefits to their employees. It is expected that such benefits should be automatically extended and that too, within a reasonable time. But such course of action has not been found expedient and the Applicant is compelled to approach this Tribunal just for implementing/execution of the orders passed by the Respondents themselves. The object of this Tribunal, least to say of any court, is to adjudicate upon the merits and is not meant for giving directions for complying the orders of the executive. We are clearly of the view that the Respondents are creating a situation wherein there is misuse of the process of Court. We find that the Respondents are not refuting the claim of the Applicant. But asking time to implement their own orders. There can be no greater misuse of the process of the Court than what is intended in this instant case. We hope and trust that the Respondents shall try to keep their houses clean in future, and shall not compel the employees particularly retired employees to approach the Court for implementing their own orders.

10. In the premises, this Original Application is hereby disposed of with direction to the Respondents to extend the benefits of second financial upgradation under ACP scheme w.e.f. 1.10.1999 if he is otherwise found fit. Applicant shall be entitled to all consequential benefits including the arrears of difference of pay, revision of pensionary benefits etc. alongwith interest at the rate

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of 8% per annum. This order shall be complied with within a period of three months from the date of its communication. No costs.

The Registry of this Bench is directed to send a copy of this order under its seal to the Chairman of Railway Board, Rail Bhawan, New Delhi so as to enable them to take appropriate action and avoid any unpleasant situation in future.


(B.N. SOM)
VICE-CHAIRMAN


(J.K. KAUSHIK)
JUDICIAL MEMBER