

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 05/03/2008

PRESENT:

THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN
A N D
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

In the Matter of

1. O.A. No. 874/2005

Ananda ... Applicant

versus

Union of India & Ors. ... Respondents

2. O.A. No. 857/2005

GunaSahoo ... Applicant

versus

Union of India & Ors. ... Respondents

3. O.A. No. 858/2005

Tipa ... Applicant

versus

Union of India & Ors. ... Respondents

4. OA No. 859/2005

Indramani Applicant



Versus

Union of India & Ors. Respondents

5. OA No.81/2006

R.B.Rana Applicant

Vs.

Union of India & Ors. Respondents

6. OA 401/2006

Ramachandra Applicant.

Vs.

Union of India & Ors. Respondents

(For Full details, see the enclosed cause title)

For Applicants: : M/s. N.R.Routray, S.Mishra, Counsel

For Respondents: : Mr. S.K.Ojha, Standing Counsel

Mr.O.N.Ghosh, Mr. P.C.Panda,

Mr. T.Rath, Counsel

ORDER

Per MR.M.R.MOHANTY, VICE-CHAIRMAN:

Refusal of the prayer of the Applicants to grant them ACP benefits is the subject matter of these Original Applications filed under section 19 of the Administrative Tribunals Act, 1985.

2. Respondents have filed counters stating that as the Applicants have been benefited by way of one promotion, they are not entitled to the first ACP and conferment of the benefits of 2nd ACP would be considered only after completion of 24 years of service. They have therefore, strongly opposed the prayer of the Applicants.

3. We have heard Learned Counsel appearing for the parties in these cases one after the other but for the sake of convenience this common order is passed which would govern all the cases. We have also perused the service books produced by the Respondents in respect of some of the Applicants in order to determine as to whether actually there has been any promotion granted to the Applicants after their regularization (from casual engagements) in the permanent establishment of Railways.

4. Before we proceed further in the matter it is necessary to record the conditions for grant of benefits under the ACP scheme adopted by the Railways by inserting in Estt. Srl. No. 288/99 dated 01.12.1999. Paragraph 5.1 of which reads as under:

“5.1. Two financial up-gradations under the ACP Scheme in the entire Railway service career of an employee shall be counted **against regular promotions** (including in-situ promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial up-gradations under the ACP scheme shall be available only if **no regular promotions during the prescribed periods (12 and 24 years)** have been availed by an employee. **If an**

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employee has already got one regular promotion, he shall qualify for the second financial up-gradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP scheme shall accrue to him.” (emphasis supplied).

5. It is well settled principle of law that where the language used in a statute is clear and unambiguous, the question of taking recourse of any principle of interpretation would not arise. While interpreting provisions, the court only interprets the law and can not legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary (Ref. Padma Sunara Rao v Union of India and Ors. reported in (2002)3 SCC 533) and State of Orissa and others v Joginder Patjoshi and Others- reported in 2004 SCC (L&S) 730.

6. It is not in dispute that the services of all the Applicants were regularized in the Gr. D posts; but they were allowed to enjoy higher pay scales all through. They never drew the scale of Rs.750-940/- as reported in the impugned order of the respective cases. On a through scrutiny of the service records, no where we noticed any such endorsement to the effect that the applicants have ever been promoted to higher posts. No rules have been produced by the Respondents showing that the posts in which they were regularized are the promotional posts from Gr. D. By

placing into service the orders of this Tribunal rendered in OA No. 740 of 2005 (disposed of on 22nd November, 2007), Learned Counsel for the Applicants resisted the stand of the Respondents. We find that the arguments based on which the Respondents intend to negative the grievance of the present Applicants have been taken note of by the earlier Division Bench of this Tribunal in the aforesaid OAs and ultimately held as under:

“4. Records were called for to peruse as to the exact facts. Arguments have also been heard and pleadings perused. The factual position as per the records is that the applicant's initial appointment has been indicated as “casual” w.e.f. 05.12.1972. There is absolutely no indication in the service records of his initial pay scale of Rs. 196-232. Pay scale as per entry 14 of the First page of the service book is Rs. 210-4-250-EB-5-270/- and date of first appointment is indicated as “cpc 1.1.1984 – 1.1.01”. Subsequent entries show that the applicant had been granted increments in 1982, 83, 84, 85, 85 and 1986 when his pay was fixed at Rs. 230/. Thereafter, applying the revised pay scale as per the Pay Commission's recommendation, the pay of the applicant was fixed in the scale of Rs. 800-1150 at Rs. 890/- with the next date of increment as 01.01.1987. This scale was continued to be available to the applicant till the scale was revised with retrospective effect from 01.01.1986 as Rs. 950-1500/- when the pay was fixed at Rs. 1150 as on 01.01.1996 and replaced further by the scale of Rs. 3050-4590/- when the pay was fixed at Rs. 3575/- with next date of increment as 01.01.1997. Thus, there is no whisper about Rs. 196-232/- pay scale in the service book. The applicant has all along been treated w.e.f. 1.1.1981 as Bridge Khalasi and as such he had not been afforded any promotion. Hence he is entitled to the ACP taking into account his temporary status w.e.f. 01.01.1981 and as regular from

01.04.1984. Thus, w.e.f. 09.08.1999 when ACP was introduced, the applicant shall be entitled to first financial up-gradation in the scale of Rs.4000-6000/- His entitlement to first ACP ought to have been given w.e.f. 09.08. 1999 in the aforesaid scale of Rs. 4000-6000/- whereas he was granted the same w.e.f. 01.04.2000 and it has been treated as the second financial up-gradation, whereas it is the first. Respondents are directed to verify only the period of temporary service and regular service and if the same tallies with the above, the applicant's case be considered for grant of ACP w.e.f. 09.08.1999 on the above lines. Order dated 22.06.2006 (Annexure-A/8) is hereby quashed and set aside so far it relates to the applicant and the Respondents shall work out the ACP as stated above and after adjusting the amount paid to the applicant the balance shall be payable. Suitable orders be passed within a period of two months from the date of communication of this order and arrears paid within two months thereafter."

7. Relying on the above decisions of this Tribunal, another DB of this Tribunal in OA Nos. 741 of 2005 & others disposed of on 4.03.2008 have held as under:

7. Arguments were heard and documents perused. To a focused question whether the post of Bridge Khalsi is filled up by promotion from Khalasi, there was no satisfactory reply. From the record in the Service book there is no mention that the Applicants have been 'promoted' as Bridge Khalasi' and on reading the entire records of each individual, it gives a picture that after they had rendered service as Khalasi, they had been appointed as Bridge Khalasi (by way of direct recruitment). In view of this it is to be taken that the Applicants have been functioning as Bridge Khalasies respectively from the dates of their appointment in 1988. The services rendered prior to 1988 have to be ignored in working out the qualifying regular service of 12 years for

first ACP. This has rightly been granted with effect from 01.04.2000 for all the individuals. The Respondents have confused themselves in referring to the earlier pay scale as Khalasi which has nothing to do with their appointments as Bridge Khalasi. Once there is no promotion (it is doubtful whether Khalasi are the feeder grade of Bridge Khalasi) question of deferring the date of first ACP does not arise.

8. In view of the above, it is crystal clear that no error occurs in granting the first ACP with effect from 1.4.2000. The error is only in cancellation of the same.

9. All the OAs are therefore allowed and the impugned orders dated 22.06.2005, in all these cases are hereby quashed and set aside. The Respondents are hereby directed 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.

10. All the above drills shall be completed within a period of four months from the date of communication of this order.

11. No costs. "

Except some factual aspects with regard to pay scales and date of regularization etc. we find no substantial change enabling us to take any contrary views express by the Division Bench.

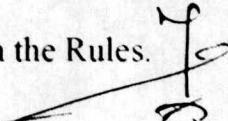


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8. By placing into service copy of the decision of this Tribunal rendered in OA No. 662 of 2005 disposed of on 15th December, 2006 Learned Standing Counsel appearing for the Railways argued that as all the applicants were allowed to enjoy higher scales they are not entitled to the benefits of ACP after completion of 12 years. We have gone through the above decisions. We find that based on the applicant's own declaration that he was promoted to next higher post, this Tribunal held therein that the Applicant of the said case was not entitled the first up-gradation after completion of 12 years. The said decision is of no help to the Respondents, as it is the specific case of the Applicants which the Respondents have failed to substantiate that the Applicants have ever been granted any regular promotion during 12 years of their service.

9. As per the ACP Scheme, one can be denied the benefits of up-gradation of scale of pay after completion of 12 years, if he/she has been given regular promotion to next higher post during the said 12 years. In the records we do not find any iota of evidence that any of the Applicants have ever been granted any promotion. Therefore, denial of first up-gradation under ACP Scheme after completion of 12 years of service cannot be held to be in accordance with the Rules.



10. Aforesaid being the situation both on facts and law, we do not hesitate to quash the impugned orders denying first financial up-gradation (under the ACP scheme) to the Applicants after completion of 12 years of service; to be calculated according to Instructions of the Railways. Hence, the impugned orders in all these OAs are hereby quashed. Respondents are directed to confer the benefits of up-gradation under ACP scheme (after completion of 12 years of service), to all the Applicants, fix/re-fix/revise their pay/pension retrospectively from the dates of their entitlements. All these exercises should be completed within a period of 120 days from the date of communication of this order. On failure of the Respondents to do it within the stipulated period, the Applicants shall be entitled to interest on the arrear emoluments; which the authorities shall remain free to realize from the officer(s) responsible for such delay.

11. In the result, all these OAs are allowed with the observations and directions made above. There shall be no order as to costs.

(C.F. *S/af* C. R. Mahapatra
MF Member (A)

S/af M. R. Mohanty
Vice-Chairman