

12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 166 of 2006
Cuttack, this the 25th day of August, 2008

Babaji 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.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 166 of 2006

Cuttack, this the ~~25th~~ day of August, 2008

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Babaji, S/o.Sahar, Aged about 61 years, Retd. Tech.
Gr.III/BBS/Engg./Con. Permanent resident of Village Taras, PO.
Jenapur, PS.Dharmasala, Dist. Jajpur.

.....Applicant.

Legal practitioner: M/s.N.R.Routray, S.Misra, Counsel

- Versus -

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, Dist.Khurda.
2. Senior Personnel Officer (Con.), East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, Dist. Khurda.
3. Chief Administrative Officer (Con.) East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, Dist. Khurda.
4. FA&CAO (Con.), East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, Dist. Khurda.
5. Deputy Chief Engineer (Con), D-II, E.C.Railway, Chandrasekharapur, Bhubaneswar, Dist. Khurda.
6. Chief Engineer (C-II) East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, Dist.Khurda.

....Respondents

Legal Practitioner : Mr. R.C.Rath, Counsel.



ORDER

MR. C.R. MOHAPATRA, MEMBER (ADMN.):-

In this Original Application, the Applicant has raised the issue of implementation of the ACP scheme in its right perspective. The ACP Scheme as a safety net measure to deal with the problem of genuine stagnation and hardship faced by employees due to lack of adequate promotional avenues, came into force after acceptance of the report of the Fifth Central Pay Commission for the Central Government Civil Employees in all Ministries/Department. In Railway this formed part of the Estt.Srl.No.288 of 1999 as would be evident under Annexure-A/5 dated 01.12.1999. The main thrust of the scheme is as under:

"4. The first financial up-gradation under the ACP Scheme shall be allowed after 12 years of regular service and the second up-gradation after 12 years of regular service from the date of the first financial up-gradation subject to fulfillment of prescribed conditions. In other words, if the first up-gradation gets postponed on account of employee not found fit or due to departmental proceedings, etc., this would have consequential effect on the second up-gradation which would also get deferred accordingly.

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 and/or any other promotion including fast-track 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 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)

In the light of the above, the Applicant, Shri Babaji, working as Tech. Gr.III under the Dy. CE/C/D-II in the scale of Rs.3050-4590/- was granted the benefits of up-gradation fixing his pay at Rs.4000-6000/- w.e.f. 01.04.2000 vide Order No. DCPO/Con/P/BBS/ACP/P-43/79/06439 dated 08.10.2003. The benefit given to the Applicant in letter under reference was cancelled vide office order under Annexure-A/7 dated 22.06.2005 with the foot note that the applicant has not completed 24 years of regular service from the date of their initial regularization which is a mandatory condition prescribed for granting 2nd financial up-gradation under ACP Scheme in terms of S.E. Railway Estt.Srl.No.288/1999 but erroneously granted 2nd financial up-gradation under ACP Scheme to the Applicant w.e.f. 01.04.2000. It was also directed that the order of cancellation of 2nd financial up-gradation shall have consequential effects. On attaining the age of superannuation, the applicant retired from service w.e.f. 30.06.2005. Thereafter, he submitted

18

~ 4 -

representation under Annexure-A/8 dated 05.07.2005 against the order under Annexure-A/7 dated 22.06.2006 canceling the benefits given under ACP scheme up-grading the pay from 3050-4590/- to Rs.4000-6000/- with effect from 01.04.2000. In order to over come the perpetual mental agony caused due to withdrawal of the benefits and the golden silence on his representation dated 05.07.2005, the Applicant has approached this Tribunal in the present Original Application filed U/s.19 of the A.T. Act, 1985 seeking the following relief(s):-

- “(a) To quash the impugned order of cancellation dated 22.6.2005 passed by the Respondent No.2 under Annexure-A/7 so far as the applicant is concerned.
- (b) Direct the Respondent to grant all pensionary as well as retirement benefit such as DCRG, Communication, Leave Salary and Pension by re-fixing the pay in scale of Rs.4,000-6,000/-.
- (c) Direct the Respondents to repay the recovered amount of Rs.15,943 with 12% interest.”

2. According to the Respondents, in the counter, the Applicant was not entitled to the ACP benefits up-grading his pay from Rs.3050-4590/- to Rs. 4000-6000/- w.e.f. 01.04.2000; because he was initially engaged as Casual Khalasi on 05.12.1972, conferred with temporary status w.e.f. 1.1.1984 which was subsequently antedated to 1.1.1981. He was regularized in a PCR Group D post of Khalasi w.e.f. 1.4.1984 and confirmed in that post

2

5
w.e.f. 1.4.1989 because as per Indian Railway Establishment Manual, Volume 1990 edition every casual labourer in the construction organization/project has to be considered for regularization first in a Gr. D post irrespective of his/her initial engagement in a Gr. D/Gr.C post. Subsequently he was regularized as Skilled Saranga on 1.4.1988. As such the substantive status of applicant being in a Gr. D post w.e.f 1.4.1984. The eligibility service of applicant as per Estt. Srl. No. 62/2004 is to be counted from 16.08.1982 taking into account 50% of service rendered from the date of attainment of Ty. Status and 100% from 1.4.1984. Thus the Applicant has completed 12 years eligibility service as on 16.08.1994. Meanwhile the applicant was regularized w.e.f. 1.4.1984 as Skilled Sarang and has been enjoying the scale of pay of Rs.800-1150/- which was revised to Rs.3050-4590/- as per the recommendation of the Fifth Central Pay Commission. Applicant having got one promotion on officiating basis, he is eligible for the financial up-gradation in the scale of pay of Rs.4000-6000/- only w.e.f. 16.08.2006 i.e. on completion of 24 years of eligibility service. Since grant of ACP w.e.f. 1.4.2000 was erroneous, the same was rightly cancelled by the competent authority. By stating so, the Respondents have prayed for dismissal of this OA.



3. The above stand of the Respondents has been strongly rebutted by the Applicant by stating that he was initially engaged as casual Khalasi under BRI/SER/CTC w.e.f. 05.12.1972; got temporary status w.e.f. 1.1.1981 and since then he was working as Bridge Khalasi carrying the scale of pay of Rs.210-290/-. He was regularized in the post of Sk. Sarang Gr.III against 60% PCR post along with other Gangman, Keyman, Sweeper, Khalasi, Store Watchman, Trolleyman, Bridge Khalasi, PW Mate, S.K.Artisan Gr.III/III/I, Sk.H/Man, Sk.Sarang Gr.I/II/III, Sk. Mistry Gr.III/III/I and others in the scale of pay of Rs.750-940/- w.e.f. 01.04.1984. Applicant along with similarly situated employees approached this Tribunal in OA No. 656/1993 for grant of skilled scale of Rs.950-1500/- as per the circular of the Railway Board dated 11.04.1985 and this Tribunal directed for extension of the scale of pay of Rs.950-1500/- to the applicants in the above OA w.e.f. 1.1.1986. The service of applicant was regularized in the post of Sk.Sarang Gr.III w.e.f. 01.04.1988. Accordingly, the Applicant was granted ACP w.e.f. 1.4.2000 which was cancelled vide order dated 22.6.2005 and finally, the applicant retired on 30.06.2005. Therefore, cancellation of the ACP granted to the Applicant was erroneous and being bad in law is liable to be quashed.



4. Heard Learned Counsel for the parties and perused the materials placed on record.

5. Learned Counsel for the Applicant has submitted that neither prior to nor after his date of regularization i.e. 01.04.1984 he had ever been allowed any regular promotion. The initial regularization of the Applicant in the Skilled Tech. Gr.III grade being 1.4.1984, he was rightly granted the ACP w.e.f. 01.4.2000 i.e. after completion of 12 years. It has been argued by Learned Counsel for the Applicant that the Respondents have misconstrued this as second up-gradation and hence cancelled the earlier order granting the ACP benefits to the Applicant. In fact, this was his first up-gradation. Grant of the scale of Rs.3050-4590/- to the Applicant vide order dated 7.6.1999 was not a promotion. The service of applicant was first regularized vide order dated 16.7.92 with effect from 01.04.1984. Subsequently, by way of rectification of the mistake committed in the order of first regularization dated 16.07.1992, second order of regularization against 60% PCR post of Sk.Tech.Gr.III by allowing skilled scale to the applicant and others w.e.f. 1.4.1988 was issued vide order dated 7.6.1999. As such, according to him, he was rightly given the benefit of ACP w.e.f. 1.4.2000 but the Respondents without putting him on any notice have withdrawn the benefits which is not



sustainable in the eyes of law. On the other hand, Learned Counsel for the Respondents, reiterating the stand taken in the counter, mentioned above, has strongly opposed the contention of the Applicant. He has also prayed that as there has been no wrong in the decision making process of the matter, the action of the Respondents needs to be sustained.

6. From the above, the moot question centers round as to whether the applicant has ever been promoted if so when; because an employee is entitled to be placed in the higher scale under ACP if he/she does not get any promotion during 12/24 years of service. Respondents have neither produced any piece of evidence through counter or during hearing of the matter showing that the applicant had ever been promoted. Annexure-A/1 and A/4 filed by the Applicant merely state '**regularization**'. No document has been placed by the Respondents substantiating that the Applicant had ever been promoted. Contentions advanced in the counter by the Respondents do not also justify the order of cancellation of ACP of the Applicant. Besides the above in similar matter in OA No. 660 of 2005, this Tribunal in order dated 22.XI/2007 while quashing the impugned order made therein directed grant of the benefits of ACP to those applicants. Respondents carried the matter to Hon'ble High Court of Orissa in WP (C) No. 7429 of 2008 and Their



- 9 -

18

Lordships of the Hon'ble High Court of Orissa in its order dated 08.07.2008 dismissed the Writ petition thereby upholding the orders of this Tribunal dated 22.11.2007. In view of the above, we find no infirmity in the order granting the Applicant ACP benefits with effect from 01.04.2000.

7. Apart from the above, it is an admitted case of the parties that no notice was put to the Applicant before cancellation of the order granting ACP benefits to the Applicant. It is settled law that no action entailing civil consequence can be taken without following the principles of natural justice. In the case of **Canara Bank and others v Debasis Das and others**, (2003) 4 SCC 557=2003(3) SLR 64 (SC) in paragraph 13 at page 570 the Hon'ble Apex Court observed as under:

"The adherence to principles of natural justice as recognized by all civilized states is of supreme importance when a quasi judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and for most principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus it is but essential that a party should be put on notice of the case before any adverse order is passed against


L

him. Thus is one of the most important principles of natural justice.

In the light of the above, the impugned order under Annexure-A/6 ^{A/7} dated ^{22.6.2005} 08.10.2003 is not sustainable being opposed to the cardinal principles of natural justice.

8. In view of the discussions made above, the impugned order under Annexure-A/6 ^{A/7} dated ^{22.6.2005} 08.10.2003, so far it relates to Applicant is hereby quashed. The Respondents are hereby directed to grant all the financial benefits pursuant to the order 08.10.2003 (including revision of pension and pensionary benefits) to the Applicant within a period of 60 (Sixty) days from the date of receipt of a copy of this order.

9. In the result, this OA stands allowed. No costs.


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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