

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


OA No. 185 of 2007


Cuttack, this the *16th* day of December, 2008

Kulamani Prusty 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.)

12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 185 of 2007

Cuttack, this the 16th day of December, 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)

Kulamani Prusty, aged about 61 years, son of Late Judhistir Prusty at present Retd. Technician Gr.III under Dy. Chief Engineer/Con/D-II/E.C.Rly/Cuttack permanent resident of Village/PO-Nadra, Via Hindol Road, Dist. Dhenkanal.

.....Applicant

By Advocate : M/s.N.R.Routray, S.Mishra.
- Versus -

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Senior Personnel Officer Construction/Coordination, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Chief Administrative Officer (Con.), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. FA & CAO (Con.) East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
5. Deputy Chief Engineer (Con.), D-II, East Coast Railway, At/Po Staton Bazar, Town/Dist. Cuttack.
6. Chief Engineer (Con), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar.
7. Sr.Divisional Financial Manager, East Coast Railway, Khurda Road Divisino, At/Po.Jatni, Dist. Khurda.

.....Respondents

By Advocate : Mr. O.N.Ghosh.

O R D E R

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

The Applicant is a retired Technician Grade III working under the Deputy Chief Engineer, Construction/D-II/E.Co.Rly, Cuttack. He retired from service on 30.06.2006. Near about one year after his

e

13
retirement, the Respondents passed an order under Annexure-A/10 dated 05.04.2007 withdrawing the benefit of financial up-gradation under ACP scheme from the scale of Rs.3050-4590/- to Rs.4000-6000/- w.e.f. 01.04.2000. This order is under challenge in the present Original Application filed by the Applicant seeking the following relief:

- “(a) To quash the impugned order dated 5.4.2007 under Annexure-A/10;
- (b) To direct the Respondents to release the pensionary benefits such as pension, commutation of pension and DCRG at the rate of pay of Rs.4600/- in the scale of Rs.4000-6000/-;
- (c) To direct the Respondents to pay the recovered amount of Rs.41,404/- with 12% interest;
- (d) To direct the Respondents to pay Rs.50,000/- as compensation for issuance of order dated 5.4.2007.”

2. Respondents, by filing a reply, opposed the prayers of the Applicant. According to the Respondents the order under challenge is nothing but rectification of the errors committed in the decision making process of granting the ACP benefits to the Applicant and to other similarly situated employees of the Department. In support of their stand that granting the ACP benefit to the applicant was erroneous one, it has been stated by the Respondents in their counter that the applicant was initially engaged as casual khalasi w.e.f. 4.8.1972 to 12.08.1972. Subsequently, he was re-engaged as casual mate w.e.f. 28.1.1974 to 3.5.1974 on daily rated basis. He was again reengaged and worked as casual khalasi from 3.6.1978 to 13.06.1978. On 14.6.1978 he was

promoted as casual mate and was granted temporary status w.e.f. 1.1.1981 and was absorbed in Gr. D PCR post w.e.f. 1.4.1988 as per para 2006 of the Indian Railway Establishment Manual, Volume II 1990 (revised edition). Thereafter on 25.6.1987 he was promoted on officiating basis to the post of Skilled Rivetor in the scale of pay of Rs.950-1500/- which scale was subsequently revised on the recommendation of the Vth Pay Commission to Rs.3050-4590/-. The Applicant was regularized in a Gr.C PCR post as Skilled Rivetor Gr.III in the scale of pay of Rs.3050-4590/- w.e.f. 1.4.1988. The post of Rivetor subsequently was re-designated as Technician Gr.III. He was promoted as Skilled Rivetor w.e.f. 25.6.1987 and was not appointed in a skilled post. The Screening Committee which met in 2003 erroneously recommended the case of applicant for grant of financial up gradation in the scale of pay of Rs.4000/- to Rs.6000/- ignoring the fact that the applicant having been regularized in a Gr.D PCR post w.e.f. 1.4.1988 and taking in account 50% of casual service with temporary status from 1.1.1981 to 31.3.1988 was entitled to second financial up-gradation under ACP only on 16.8.2008 but by that time the applicant having retired from service was not entitled to the said benefit. However, this mistake having been noticed at a later stage the recovery of the excess payment towards pay and allowances w.e.f. 1.4.2000 to 30.6.2006 amounting to Rs.41, 404 was

2

5


calculated and deducted from the DCRG amount of the applicant after passing the order under Annexure-A/10- which needs no interference.


3. Applicant has also placed on record copy of the rejoinder rebutting the stand taken in the counter filed by the Respondents.

4. Heard rival submissions of the parties and perused the materials placed on record. By producing copy of the order dated 166 of 2006 dated 29th August, 2008 in the case of Babaji v UOI and others, Learned counsel for the Applicant submitted that as the issues involved in this OA have already been determined by this Tribunal and it is not necessary to go into details of the present matter and by applying the aforesaid decision, this OA needs to be allowed. Learned Counsel appearing for the Respondents has also not controverted the above stand. On examination of the facts of the present case vis a vis the case of Babaji (supra) we find that as in that case, the Respondents have not produced any ^{un}impeachable documentary evidence in support of their plea that the applicant had ever been promoted to the higher post during 12/24 years of his service. As such we are of the opinion that there is no reason to differ from the view already taken by this Tribunal in the case of Babaji and consequently to quash the present impugned order under Annexure-A/10. We order accordingly and restore the order under which the Applicant was granted the ACP benefits from Rs.3050-4590/- to Rs.4000-6000/- w.e.f. 1.4.2000.

2

5. Resultantly, the Applicant is entitled to get his pay, pension re-fixed and consequential retirement dues in the scale of pay of Rs.4006-6000/-. We further direct the Respondents to do so and refund the withheld/recovered amount of Rs.41,404/- to the Applicant forthwith at any rate not beyond 45 days from the date of receipt of copy of this order; failing which the Applicant would be entitled to interest @ Rs.12% per annum till the actual payment is made. With the aforesaid observations and directions this OA stands allowed. There shall be no order as to costs,


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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