

6


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No.291 of 2007
Cuttack, this the 30th day of July, 2009

Madhusudan Pradhan 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.)

7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.291 of 2007

Cuttack, this the 30th day of July, 2009

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)

Madhusudan Pradhan aged about 53 years, son of Gayadhar Pradhan at present working as a Trackman under Dy. Chief Engineer-II/Con/E.Co.Rly/Jajpur Keonjhar Road.

.....Applicant

By Advocate : Mr.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. Chief Administrative Officer (Con.), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Senior Personnel 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. Dy.CPO (Con.) East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

....Respondents

By Advocate :Mr.M.K.Das

O R D E R

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

Applicant is at present working as a Trackman under Dy. Chief Engineer-II/Con/E.Co.Rly/Jajpur, Keonjhar Road. By filing this Original Application he seeks direction to the Respondents to up-grade his scale to Rs.2650-4000/- instead of Rs.2610-3540/- as per the order dated 28.03.2005 and pay him the differential arrear salary retrospectively w.e.f. 28.03.2005 consequent upon the up-gradation of his scale of pay with interest at the rate of 12% per annum.

2. By filing counter Respondents opposed the contentions of the Applicant. The main stand of the Respondents is that as the
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Applicant is a Khalasi he was not entitled to the scale which he claims by way of up-gradation. By filing copy of the order dated 28.03.2005 he has contended that if it is accepted that the Applicant is a Khalasi then the Respondents having granted the up-graded scale at Rs.2650-4000/- to the counter part employees of Khalasi of the Railway, Applicant is entitled to the said scale and if it is treated that the applicant is a Trackman then also the applicant is entitled to the above scale due to the order of this Tribunal in OA No. 467/2007.

3. Heard the rival submissions advanced by the Learned Counsel appearing for respective parties and perused the materials placed on record.

4. In course of hearing by filing copy of the order dated 24th September, 2008 of this Tribunal in OA No. 467 of 2007 (Netrananda Mallick v Union of India and others) it has been contended by the Learned Counsel for the Applicant that as the issue raised in this OA has already been set at rest by the above order, this OA may be allowed by granting the relief claimed by the Applicant. This was not disputed by the Learned Counsel appearing for the Respondents. However, the Learned Counsel for the Respondents sought some more time to examine the matter. We have perused the order as well as records of aforesaid OA produced by Learned Counsel for the Applicant. For better clarity full text of the aforesaid order is extracted herein below:

"One Shri Netrananda Mallik, working as Trackman under Deputy Chief Engineer II (Con.) of East Coast Railway, Jajpur Keonjhar Road in this Original Application U/s.19 of the Administrative Tribunals Act, 1985 has sought for directions to the Respondents (a) to up-grade his scale of pay from Rs.2610-3540/- to Rs.2650-4000/- as per the orders dated 28.03.2008; (b) to grant him 2nd financial up-gradation w. e. f. 15.02.2007;

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and (c) to pay him the upgraded scale's consequential differential arrear salary retrospectively with interest at the rate of 12 per cent per annum.

2. The back ground upon which the Applicant registered his claim is that in the year 1973, the Applicant was engaged as casual KSI/Reja. He was conferred with the temporary status w. e. f. 01.01.1981 and was regularized w. e. f. 01.04.1984 vide order under Annexure-A/1 dated 09.01.1991 in the scale of pay of Rs.750-940/- (replacement scale is Rs.2550-3200/-). Vide order under Annexure-A/2 dated 01.10.1999, as per the recommendation of the Fifth Central Pay Commission, the Ministry of Railway introduced the ACP scheme to deal with the problems of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. On 31.03.2004, the Railway Board issued RBE No. 69 of 2004 clarifying that 50% temporary status period of service shall be taken into consideration both for computing qualifying service for pension and grant of ACP benefits to an employee like the Applicant. Vide order under Annexure-A/4 dated 28.03.2005, the Applicant was granted first financial up-gradation fixing his pay at Rs.2610-3510/- w. e. f. 01.10.1999. Being aggrieved by such fixation of his pay at Rs.2610-3510/- by way of granting him first up-gradation under ACP scheme instead of Rs.2650-4000/-, applicant submitted representation under Annexure-A/6 dated 05.01.2007 seeking removal of injustice in the matter of financial up-gradation. According to Applicant, in the meantime he has been promoted to the post of Sr. Gangman w. e. f. 1.10.1996 w. e. f. 01.10.1996 and that there being no answer to the representation; he has approached this Tribunal in the present Original Application seeking the aforesaid relief.

3. In the Counter, the Respondents have maintained that the Applicant is not entitled to the relief claimed in this Original Application; because the applicant was granted temporary status in the grade of Gangman w. e. f. 1.1.1984 which was subsequently antedated to 1.1.1981. Thereafter the applicant was promoted to Sr. Gangman in the scale of pay of Rs.800-1150/- w. e. f. 01.10.1996. The applicant was first regularized and confirmed in a Group-D PCR Post of Khalasi w. e. f. 1.4.1984 and after coming into force the ACP scheme w. e. f. 01.10.1999, taking into account 50% of temporary status of casual service w. e. f. 1.1.1981 and 100% regular service from 01.04.1994 the Applicant was granted the first up-gradation under ACP upgrading his scale to Rs.2610-3540/- w. e. f. 01.10.1999. It has been averred that the substantive appointment of the applicant was in the post of Khalasi in the scale of pay of Rs.750-940/- which was subsequently revised to Rs.2550-3200/-. The next post being in the scale of pay of Rs.2610-3540/- on first up-gradation under ACP scheme, his scale was rightly fixed at Rs.2610-3540/-. Further stand of the Respondent is that as per Para-2007 of Indian Railway Establishment Manual Volume 2/1990 edition all those casual labourers even engaged in skilled categories are to be first regularized in group D posts and thus, the applicant's status as trackman is irrelevant for his promotion. They have denied the

10
-4-

allegation of granting the scale of pay of Rs.2650-4000/- to similarly situated employees who had passed the medical test. However, it has been admitted by the Respondents in their counter that grant of second financial up-gradation w.e.f. 15.02.2007 will be examined and if the applicant is other wise eligible he will be granted the same along with similarly situated employees. In the rejoinder the Applicant clarified some of the points raised in the counter by the Respondents and we have taken note of the same.

4. We have heard the Learned Counsel for both sides and perused the materials placed on record.

5. Learned Counsel for the Applicant, by pressing into service copy of the hierarchy channel of the posts and pay has argued that granting the up-graded pay under ACP scheme to the applicant at Rs.2610-3540/- was highly illegal and arbitrary as no such scale of pay is provided either in the promotional grade of Khalasi or Trackman. It has been argued that if it is treated that the Applicant's substantive post is Khalasi carrying the scale of pay of Rs.2550-3200/- then next higher post being Khalasi Helper, he is entitled Rs.2650-4000/- and if it is treated that the applicant is a Trackman the next higher post being Sr.Trackman he is entitled to fixation of his pay at Rs.2650/- by way of up-gradation of his scale under ACP scheme. Therefore, according to him, fixations of his pay at Rs.2610/- was not in accordance with Rules and the same needs to be reviewed. Except reiteration of the stand taken in the counter, no record has been produced by the Respondents either during argument or in the counter substantiating their stand of granting the scale of Rs.2610/- in the first up-gradation under ACP. However it has been averred by the Applicant in his rejoinder that in the meantime he has been promoted to the post of Sr. Gangman carrying the scale of pay of Rs.2650-4000/- w.e.f. 1.10.1996. In the above premises, as per the ACP scheme, the Applicant ought to have been placed in the scale of pay of Rs.2650-4000/- instead of Rs.2610/- as has been given to him under Annexure-A/4. As discussed above, there has been wrong in the decision making process of granting the up-graded scale of pay to the Applicant under ACP scheme, Hence the Respondents are directed to revise the order under Annexure-A/4 by fixing his pay under ACP scheme at Rs.2650/- instead of Rs.2610/-. The Respondents are also hereby directed to pay the applicant the differential arrear salary to the Applicant. The entire drill shall be completed within a period of 60(sixty) days from the date of receipt of a copy of this order.

6. In the result, this OA stands allowed by leaving the parties to bear their own costs."

5. On examination of the facts of both the cases we find no distinction between both of them. Accordingly, by applying the ratio of the decision of the Hon'ble Apex Court in the case of **Maharaj Kirishan Bhatt and Anr. V State of Jammu & Kashmir & Ors**, (2009) 2 SCC (L&S) 783 we

2

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hold that the Applicant is entitled to the scale of Rs.2650-4000/- instead of Rs.2610-3540/- w.e.f. 28.3.2005. Respondents are hereby directed to re-fix the pay of the applicant as directed above and pay him the differential arrear salary within a period of 45 days from the date of receipt of this order. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.

Thankappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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