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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 210 of 2008
Cuttack, this the 21st day of March, 2011

Abhiram Swain Applicant

-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?

A.K.
(A.K.PATNAIK)
Member(Judl)

C.R.
(C. R. MOHAPATRA)
Member (Admn.)

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THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

A N D

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Abhiram Swain, son of Karuni Ex Senior Trackman under Senior Section Engineer (Works), East Coast Rialway, Khurda permanently resident of Village Nachipura, Po.Chakua, PS Kujang, Dist. Jagatsinghpur.

.....Applicant

By legal practitioner: Mr. N.R.Routray, Counsel.

-Versus-

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Senior Personnel Officer (Con.)/Coordination, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Financial Advisor and Chief Accounts Officer (Con.), E.C.Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist.Khurda.
4. Deputy Chief Engineer/Construction, E.C.Railway, Jajpur Keonjhar Road, Dist. Jajpur.
5. Senior Divisional Engineer (Coordination), East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.
6. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.
7. Senior Divisional Financial Manager, East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.

.....Respondents

By legal practitioner: Ms.S.L.Patnaik, Counsel.

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ORDER

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

Applicant's submission is that he entered into the service of the Railway on casual basis as Khalasi/Rjea, got temporary status w.e.f. 1.1.1981 and subsequently regularized w.e.f. 1.4.1984 vide order dated 09-01-1991. Hence he was entitled to second financial up-gradation under ACP w.e.f. 15.8.2006.

2. The Respondents filed their counter in which it is stated that the Applicant got temporary status on 01-01-1981 and was regularized on 09-01-1991. Hence taking into 50% of the temporary status period of service and 100% of regular service, he completed 12 years service as on 05-01-1988 and accordingly he was granted the first financial up-gradation under ACP w.e.f. 05-01-1998. The Applicant would have been entitled to the benefit of 2nd financial up-gradation under ACP on 04-01-2010 but meanwhile, because of his being invalid on medical ground on 01-05-2007 he was not granted the said benefit. As regards the order of regularization dated 09-01-1991 in

Annexure-A/1 filed by the applicant it was clarified by the Respondents that the said order has been issued for confirming his temporary service but the applicant completes 24 years of regular service only on 4.1.2010.

3. In the rejoinder, it has been contended by the Applicant that as per Annexure-A/4 the applicant became eligible for 1st financial up-gradation w.e.f. 16-04-1994. The open Line Authorities intended to give 2nd financial up-gradation under ACP. But the verificant who is a stranger to this case, without verifying records filed the counter denying the claim of the Applicant. Further contention of the applicant is that this case is covered by the earlier order of this Tribunal dated 24.09.2008 in OA No. 467 of 2007 filed by Shri Netrananda Mallick, a similarly situated employee and pursuant to the order of this Tribunal he has already been paid second financial up-gradation w.e.f. 02.09.2006. Therefore, according to the Applicant, he is entitled to the relief claimed in this OA.

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4.

The Respondents also filed reply to the rejoinder in which it has been stated that the applicant got temporary status w.e.f. 1.1.1981 and consequently regularized w.e.f. 1.4.1984. Accordingly he was due to get the second financial up-gradation w.e.f. 16.8.2006 (taking 50% of casual service into consideration). But prior to 16.8.2006 he was in sick list from 28.1.2006. Though he was eligible for second financial up-gradation under ACP w.e.f. 16.8.2006 but for the reason that he was not on duty due to being sick and no leave salary was drawn in his favour for that period, he was not entitled to the second financial up-gradation under ACP. It has further been stated by the Respondents that the financial up-gradation under ACP scheme came into effect from 1.10.1999. Prior to this date the applicant was promoted to the scale of Rs.2650-4000/- w.e.f. 01-10-1996. So grant of 1st financial up-gradation to the applicant does not arise and for the reasons stated above he was also not entitled to the second financial up-gradation under ACP.

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5. Fact remains that the applicant was medically invalidated w.e.f. 01-05-2007 and the Applicant was entitled to the second financial up-gradation w.e.f. 16.8.2006 but according to the applicant as he was sick on that day and no leave salary was paid to him, he was not granted the benefit of the second financial up-gradation.

6. Heard the rival submissions of the parties and perused the materials placed on record. No Rule or instruction has been produced by the Respondents in support of their stand that during sick time if ACP benefit falls due to an employee he is not entitled to especially when no leave salary was drawn in his favour. Admittedly applicant was declared medically invalidated w.e.f. 01-05-2007. Service sheet establishes that 269-LAP and 169 days LHAP was due to the applicant till 30.04.2007. It also establishes that the period of service upto 01-05-2007 of the Applicant has been taken into consideration for all purposes. Hence, we find no force on the submission that as the applicant was sick on the

specific date when he was due for second financial up-gradation under ACP he was not entitled to the same. We hold that the applicant was entitled to get the benefit of the second financial up-gradation under ACP scheme which fall due to him w.e.f. 16-08-2006. Accordingly, Respondents are hereby directed to re-fix the pay and pension of the applicant within a period of thirty days and pay him the differential arrears by way of revision of his pay within a period of 45 days thereafter; in other words the entire exercise shall be completed by the Respondents within a period of 60(sixty) days from the date of receipt of copy of this order.

7. In the result, this OA stands allowed in the afore-stated terms. No costs.



(A.K.PATNAIK)
Member(Judl)



(C. R. MOHAPATRA)
Member (Admn.)