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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No.346 of 2008
Kuntal @ Sridhar Satpathy Applicant
Versus
Union of India & Others. Respondents

Order dated 15.04.2010.

C O R A M
THE HON'BLE MR.B.V.RAO, MEMBER (JUDICIAL)
And
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (ADMN.)

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The applicant is a retired Mate of the Railway. He retired from service w.e.f. 30-11-2005. By filing this Original Application, he seeks direction to the Respondent to grant 1st Financial up-gradation w.e.f. 01.10.1999 to the scale of Rs.3050-4590/- and also the consequential benefits i.e. differential arrear salary leave salary, DCRG commuted value of pension and arrears pension with 12% interest. By filing counter Respondents opposed the contentions raised by the applicant in support of the prayer in this Original Application. Applicant has also filed rejoinder. Heard Learned Counsel for both sides and perused the materials placed on record. By filing copy of the order dated 13th August, 2008 in OA No. 135 of 2005 (Nrusingha Sahu v Union of India and others) of this Tribunal, at the out set, it is contended by Learned Counsel for the Applicant that the issues raised in this Original Application ~~is~~ no more inte-gra as this case is fully covered by the aforesaid decision of this Tribunal. Learned Counsel appearing for the Respondents has fairly submitted that there is no occasion for them to examine whether this case is covered by the aforesaid decision as learned counsel for the applicant has raised this only in course of hearing. We have examined the issues raised in the disposed of the matter relied on by the learned counsel for the applicant

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vis-à-vis the present one. Relevant portion of the aforesaid order of this Tribunal, for the sake of convenience, is extracted herein below:

“4. Heard Learned Counsel for both sides and perused the materials placed on record. Clause 5.1 of the ACP scheme under Annexure-A/2 dated 01.12.1999 provides 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 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 promotion on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him.”

5. It is the specific case of the Applicant that though he was regularized in Group D carrying the scale of Rs.750-940/- vide order under Annexure-A/5 dated 16.7.1992 w.e.f. 01.04.1984, he was drawing the pre-revised scale of pay of Rs.800-1150 which was revised to Rs.2650-4000/-. He was never promoted to the post carrying the scale of pay of Rs.800-1150/-. According to the Respondents the substantive post of applicant is Gr. D carrying the scale of Rs.750-940/- but he was given ad-hoc/officiating promotion to the post carrying the scale of Rs.800-1150/-. The Applicant has filed another OA No. 722 of 2006 seeking fixation of his pay in higher scale. Respondents in their counter opposed the contention of the Applicant by stating that the Applicant is not entitled to the relief claimed in the said OA. It has been stated in the counter that the service of applicant was regularized against PCR Group D post w.e.f. 1.4.1984 in scale of Rs.196-232/- = Rs750-940/- and he was allowed to continue as Head Trolley man in scale of Rs.210-290/- = Rs.800-1150/- against PCR Hd. Trolley man post w.e.f. 01.04.1984 under DEN/Reg/CTC as per the post concurred vide FA & CAO/C/GRC's letter No. FE/Construction/Reserve/Vide Pt.I dated 04.12.1987 and sanction of GM/SERly/GRC was communicated vide CPO/S.E.Rly/GRC's letter No. P/R/17/PR-CR/Pt.IV dt. 26.5.1988. The above PCR post was created by the CE/C/GRC (Bridge Project) basing on the worth of construction charges. It has further been averred that as the Head Trolley man post was created in scale of Rs.800-1150/- vide CPO/GRC's letter dated 26.05.1988 the applicant was granted the said scale basing on the sanctioned post created by CPO/SE Rly/GRC w.e.f.

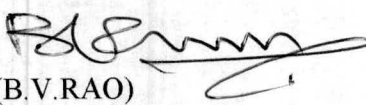
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1.4.1986. The scale of Rs.800-1150/- was subsequently revised to Rs.2650-4000/- w.e.f. 1.1.1996 and the applicant was allowed to draw the same scale till his retirement. In view of the above, the stand of the Respondents that the Applicant was drawing the scale of Rs. 2650-4000/- on ad-hoc basis is neither proved on fact nor is based on any evidence. As such, non-conferment of benefit of ACP after completion of 12 years regular service on the Applicant cannot be approved.

6. In the result, the Respondents are hereby directed to grant the Applicant first up-gradation benefits under ACP after completion of his 12 years of service. The Respondents are also directed to revise/re-fix the pay, pension and all other pensionary benefits of the Applicant and pay him the arrear dues retrospectively. All drills shall be completed by the Respondents within a period of 60 days from the date of receipt of copy of this order.

This OA stands allowed to the extent stated above. There shall be no order as to costs."

2. Prima facie it appears that the present case is covered by the decision in the case of Nrusingha (surpa). In view of the above, this Original Application is disposed of with direction to the Respondents to examine the case of the applicant in the light of the decision rendered by this Tribunal in the case of Nrusingha Sahu (Supra) and grant him the benefits as has been granted to Nrusingha Sahu pursuant to the order of this Tribunal dated 13th August, 2008 in OA No. 135 of 2005. This shall be done within a period of ninety days from the date of receipt of this order. There shall be no order as to costs.


(B.V.RAO)
MEMBER(JUDL.)


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