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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.38 of 2008
Cuttack, this the 20th day of July, 2010

Golakha Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *Yes*.
2. Whether it be circulated to all the Benches of the CAT or not? *Yes.*

M.R. Mohanty
(M.R. MOHANTY)
VICE-CHAIRMAN

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

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.38 of 2008
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C O R A M:

THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN

A N D

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

Golakha, aged about 67 years, Son of Late Raghu retired Sr.Trackman, Office of JE-1, Kalupada Ghat, S.E.Railway (now E.C.Railway), permanent resident of Village Washpadar, Po-Kalupadaghat, Ps.Tangi, Dist. Khurda..

.....Applicant

By Legal Practitioner : M/s.N.R.Routray, S.Mishra, Counsel
- Versus -

1. Union of India represented through the General Manager, E.C.Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Divisional Railway Manager, East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.
3. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.
4. Senior Divisional Financial Manager, East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.

....Respondents

By Legal Practitioner: Mr. S.K.Ojha, Standing Counsel.

O R D E R

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

The issue involved in this Original Application falls in a short compass. The Applicant was a casual employee working in the Railway. As per the policy decision, he was conferred with temporary status on 24.03.1966 and subsequently, he was regularized w.e.f. 27.12.1984. As per the recommendation of the fifth Central Pay Commission, to deal with the problems of genuine stagnation and hardship faced by the employees due to

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lack of adequate promotional avenues, the Ministry of Railway introduced the ACP scheme which came into force w.e.f. 1.10.1999. Applicant retired from service w.e.f. 31.12.2000. Thereafter, Railway Board vide RBE No.69 of 2004 issued clarification to count 50% of the temporary status for computing the minimum period of service of 12/24 years of service for grant of benefit under the ACP scheme. Therefore by making representation dated 14.5.2007 applicant sought the benefit of the Railway Board instruction in other words for grant of second financial up gradation by computing 50% service of the period of temporary status to regularization. Alleging no response on the said representation, applicant has approached this Tribunal in the present Original Application seeking direction to the Respondents to direct the Respondents to grant 2nd financial up-gradation w.e.f. 01.10.1999 and further to direct the Respondents to issue revised PPO showing the scale as Rs.2750-4590 and pay him the differential arrear salary and all other retirement dues.

2. Respondents filed their reply in which their stand is that applicant was engaged in the Railway as a casual Gangman (CP) in scale Rs.70-85/- (pre-revised) on 24.3.1966 and regularized against the post of Gangman w.e.f. 27.12.1984 in the scale of Rs.75-85(pre-revised)/Rs.200-250/-(revised). The applicant was promoted to the post of Sr.Gangman in the scale of Rs.800-1150/-

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(4th CPC) w.e.f. 01.01.1992. After completing 16 years regular service finally the applicant retired from service w.e.f. 31.12.2000. Applicant could not be granted the 2nd financial up gradation as he had already enjoyed one promotion during his 16 years of service. Further case of the Respondents is that the provision of RBE No.69 of 2004 dated 31.3.2004 for counting 50% temporary service period for granting the benefit of ACP has no application as by the time above instruction came into effect applicant was no more in service and that there is no mention in the instruction that the same has retrospective implication. Besides the above, the Respondents have also objected to the very maintainability of this OA on the ground of limitation.

3. Through rejoinder the Applicant by bringing copies of the RBE No.69 of 2004 dated 31.3.2004 and subsequent instruction dated 31.1.2005 has tried to establish that the contentions raised by the Respondents are not correct and he is entitled to 2nd financial up gradation pursuant to the clarification issued by the Railway Board dated 31.3.2004. Accordingly reiterated his prayer made in the OA.

4. Heard Mr.N.R.Routray, Learned Counsel appearing for the Applicant and Mr. S.K.Ojha, Learned Senior Standing Counsel appearing for the Respondents-Railway and perused the materials placed on record.

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5. Completion of 50% temporary status period for calculating the qualifying service for grant of 2nd financial up gradation to the applicant is not in dispute. The only question for decision in this Original Application is whether the clarification issued by the Railway Board vide RBE No.69 of 2004 dated 31.3.2004 is applicable to the applicant as the above instruction came after the retirement of the applicant. According to Mr. Ojha, Learned Standing Counsel appearing for the Respondents the instruction of the Railway Board having no retrospective application, the applicant is not entitled to get the benefit of the instruction. It is the positive case of the Respondents' Counsel that there being no specific provision that this instruction dated 31.3.2004 has retrospective implication/application and past cases need examination Applicant cannot claim the benefit by virtue of the said instructions. In support of his argument he has relied on the decision of the Hon'ble Apex Court in the cases of Secretary (Estt.) Rly Board v D.Francies Paul, (1996) 10 SCC 134; Union of India and others v V.D.Dubey, AIR 2010 SC 425 and Indian Drugs and Pharmaceuticals Ltd v Indian Drugs and Pharmaceuticals Employees Union, (2007) 1 SCC 408. On the contrary Learned Counsel for the Applicant has argued that for the delay in issuing the clarification by the Railway the applicant cannot be held responsible and that even if the instruction came at a later date

without any mandate to review the past cases, it cannot be said that the principle decided therein has no application to the case of the applicant. However relying on the Annexure-A/7 it has been contended by the Applicant's counsel that the stand of the Respondents is no more valid as this situation has been taken care of by the circular under Annexure-A/7 issued in furtherance to the instruction of the Railway Board under Annexure-A/5. Further stand of the Applicant's counsel is that the issue involved in this case is no more *res integra* as this question came up for consideration in another OA No.740 of 2005 & OA No. 844 of 2005 filed by similarly situated employees and after giving full consideration to the points raised in the present OA, this Tribunal directed for grant of the ACP benefits to the said applicant.

RBE No.69/2004 dated 31.3.2004 (Annexure-A/5)

reads as under:

“Sub: Financial Up-gradation under the ACP Scheme- Clarification regarding.

Please refer to Board's letter of even number dated 1.10.1999 regarding the Assured Career Progression Scheme (ACPS) and subsequent amendments/clarifications that have been issued from time to time.

2. The issue regarding extension of the scope of the ACP Scheme so as to count 50% of temporary status casual labour service on absorption in regular employment for the purpose of grant of benefit under the ACPS was raised by staff side in the forum of DC/JCM.

3. The matter has been examined and it has been decided that 50% of temporary status casual

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labour service on absorption in regular employment may be taken into account towards the minimum service of 12/24 years for the grant of benefit under the ACP scheme on the analogy that the same is also reckoned as qualifying service for pension.” [Emphasis supplied]

Circular dated 31.1.2005 (Annexure-A/7) reads as under:

“While granting ACP benefit to PCR staff some doubts have been raised by this office and the same have been now clarified by CPO/ECoR/BBS vide a letter dated 28.1.2004. Accordingly, the service particulars of all PCR staff needs to be reviewed to extend the benefits to more staff under ACP scheme as well also to rectify the anomalies, if any occurred earlier while granting ACP benefits. PCR staff as a whole in the construction organization for granting ACP benefit can be divided broadly into three categories as below and service particulars needs to be examined granting ACP benefit.

- 1) Staff due for granting ACP benefit as per rules but not granted till date;
- 2) Staff in service and granted ACP benefit but entitled for higher grades with different dates due to the clarification now received from CPO/ECoR/BBS and also due to adding 50% of temporary service rendered from the date of attaining temporary status to the date of regularization in PCR cadre;
- 3) Staff on rolls as on 01.10.1999 but retired from service or expired or transferred to open line thereafter without avail any ACP benefit under extant rule.

Now GM/ECoR/BBS and CAO/BBS has specifically fixed up the target to complete this work of granting ACP scheme benefit to all eligible PCR staff before Feb.2005 and service particulars of staff of category No.1 above is under scrutiny of this office.

In view of the above changed position and circumstances, you are requested to furnish the service particulars of the staff working under your control in the revised formats enclosed herewith for 2nd and 3rd category of the staff separately and the same should reach this office along with SRs by

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deputing the dealing assistant with 7 days positively. The service particulars so furnished should be specifically certified by the dealing assistant with signature name and designation so that they cannot evade from the responsibilities in case of future complications/litigation if any arises, due to the wrong information furnished by them.

This may please be treated as most urgent." [Emphasis supplied]

6. On careful examination and harmonious reading of the ACP scheme under Annexure-A/3, Railway Boards' instruction under Annexure-A/5 and the instruction under Annexure-A/7 dated 31.1.2005 vis-à-vis the contentions raised by the Respondents in their counter and the arguments advanced by the Respondents' in support thereof, we have no hesitation to hold that Railway Boards' instruction dated 31.3.2004 was in continuation of the ACP scheme formulated by the Railway under Annexure-A/3. In the ACP scheme under Annexure-A/3 provision for counting of 50% temporary service for grant of ACP benefits was not available. Therefore, on being confronted with the service association, the Railway Board consciously issued the instruction in furtherance to the ACP scheme under Annexure-A/3 specifically stating that "the issue regarding extension of the scope of the ACP Scheme so as to count 50% of temporary status casual labour service on absorption in regular employment for the purpose of grant of benefit under the ACPS was raised by staff side in the forum of DC/JCM". The ACP scheme was introduced to meet the genuine problem of stagnation

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and hardship faced by the employees due to lack of adequate promotional avenues. As such denying the benefit to the Applicant as per clarification in the instruction dated 31.3.2004 would negate the very purpose of the ACP scheme itself. However, the entitlement of the benefit of the instruction dated 31.3.2004 is fortified by the subsequent instruction under Annexure-A/7 as it clearly provides that '**accordingly, the service particulars of all PCR staff needs to be reviewed to extend the benefits to more staff under ACP scheme as well also to rectify the anomalies, if any occurred earlier while granting ACP benefits.....Staff on rolls as on 01.10.1999 but retired from service or expired or transferred to open line thereafter without avail any ACP benefit under extant rule'**'. Going by the above we have no doubt to hold that the applicant's case needs review/reconsideration for grant of 2nd ACP as per RBE No.69/2004 dated 31.3.2004 as already held by this Tribunal in earlier Original Applications referred to above. However, before concluding the matter, we have gone through the decisions relied on by Mr. Ojha, Learned Senior Standing counsel for the Respondents. But we find that facts and situation in all the above cited case relied on by Mr. Ojha being different and distinct those decisions have no application to the present case. Rather it is noticed that the ACP scheme by itself is retrospective in nature. The clarification issued is a recognition of

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the service rendered by an employee prior to the issue of the ACP scheme/date of issue of the circular as well as prior to the date of coming into force of the circular. Hence the argument that there having no clear cut direction that these instructions will have retrospective effect the applicant is not entitled to the benefit is of no consequence. For the discussions made above, we find no distinguishing feature to deviate from the view already taken by this Tribunal in earlier similar OAs.

7. Accordingly, the Respondents are directed to consider the case of the applicants for grant of 2nd ACP in the light of the provisions made in RBE No.69/2004 dated 31.3.2004 (Annexure-A/5) and Circular dated 31.1.2005 (Annexure-A/7) within a period of 30 days from the date of receipt of this order and pay the applicant differential financial emoluments including revision of pension and pensionary benefits within another period of thirty days. In the result this OA stands allowed to the extent stated

above. No costs.

M.R. Mohanty
(M.R.MOHANTY)
VICE-CHAIRMAN

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