

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No. 439 of 2008

Cuttack, this the 31~~st~~ day of March, 2011

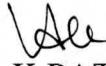
A.K.Samantaray .... Applicant

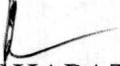
-v-

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.PATNAIK)  
Member(Judl)

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

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A No. 439 of 2008  
Cuttack, this the 31<sup>st</sup> day of March, 2011

CORAM:  
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)  
A N D  
THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Abhaya Kumar Samantaray, Son of Chandramani Samantaray, aged about 55 years, at present working as Senior Trackman under Senior Section Engineer (Works), East Coast Railway, Dist. Khurda.

.....Applicant  
By legal practitioner: M/s.N.R.Routray,S.Mishra, Counsel.

-Versus-

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Senior Divisional Engineer (Coordination), East Coast Railway, Khurdas Road Division, At/Po.Jatni, Dist. Khurda.
3. Senior Personnel Officer, Construction/Coordination, 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/Construction, ECoRailway, Jajpur-Keonjhar Road, Dist. Jajpur.

....Respondents  
By legal practitioner: Mr.R.S.Behera, Counsel.

O R D E R

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

The applicant has filed this OA seeking to quash the order of rejection dated 30.10.2008 and to grant him second financial up-gradation under ACP scheme w.e.f. 15.8.2006 placing the applicant in the scale of Rs.3050-4590/-. According to the

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Applicant in the year 1973 he was engaged on casual basis as Khalasi/Reja under the Respondents. On 01-01-1981 he was granted temporary status and on 01-04-1984 service of the applicant was regularized vide order dated 09-01-1991 (Annexure-A/1). On the recommendation of the Fifth Central Pay Commission, the Respondents introduced grant of two financial up-gradation under ACP, one after completion of 12 years and the other after 24 years of service. This scheme came into effect w.e.f. 01-10-1999. Railway Board issued instruction vide RBE No. 69 of 2004 for computing 50% temporary status period towards calculating the period of service of 12/24 years for grant of the financial up-gradation under ACP on the analogy that the same is also reckoned as qualifying service for pension. On 31-01-2005, the CAO/Con issued order for removal of anomaly and for revision of the up-gradation granted under ACP scheme to the employees. Vide order No. 48/05 dated 28-03-2005, the applicant was granted first financial up-gradation under ACP w.e.f. 16-08-1997. By making representation dated 25.5.2007 applicant prayed for grant of 2<sup>nd</sup> financial up-gradation under ACP w.e.f. 15.8.2006. Since no heed was paid to such request of the applicant, he approached this Tribunal in OA No. 27 of 2008. This Tribunal disposed of the matter at the admission stage on 16.1.2008 directing the

Respondents to consider and decide the representation for grant of 2<sup>nd</sup> financial up-gradation as per Rules/instructions. Respondent No.5 vide order dated 14.8.2008, granted 2<sup>nd</sup> financial up-gradation to similarly situated persons w.e.f. 17.8.2007 but rejected the claim of the applicant for grant of second financial up-gradation under ACP w.e.f. 15.8.2006 and communicated the decision in letter under Annexure-A/7 dated 30.10.2008. As per the letter under Annexure-A/5 the applicant is entitled to the 2<sup>nd</sup> financial up-gradation under ACP w.e.f. 4.1.2010.

2. Respondents filed their counter in which it has been stated that the applicant was granted temporary status w.e.f. 1.1.1981 vide letter dated 25.8.1984. Thereafter, he was regularized on 09-01-1991. Taking into account 50% of the temporary status and 100% of regular service, the applicant completed 12 years of service as on 5.1.1998 and accordingly he was granted the first financial up-gradation under ACP and the second ACP will fall due w.e.f. 4.1.2010. Prior to that the applicant is not entitled to the second financial up-gradation under the ACP as claimed by him in this OA. Accordingly, Respondents have prayed for dismissal of this OA.

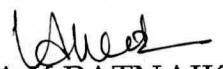
3. Applicant's contention in his rejoinder is that he was brought over to regular establishment w.e.f. 1.4.1984 (Annexure-

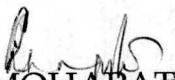
A/1). As such by computing 50% of temporary status service i.e. from 1.1. 1981 to 31.3.1984 and 100% of regular service, he has completed 12 years service as on 16.8.1994. The construction authorities vide order dated 28.3.2005 (Annexure-A/4) granted 1<sup>st</sup> financial up-gradation under the ACP scheme. As such, the applicant eligible for grant of 2<sup>nd</sup> financial up-gradation w.e.f. 15.8.2006 as per para 15 of the condition of the ACP scheme.

4. Heard Learned Counsel for both sides and perused the materials placed on record. There is no dispute in regard to conferment of temporary status w.e.f. 1.1.1981 on the Applicant. Based on the order under Annexure-A/1 applicant's contention is that he was regularized w.e.f. 1.4.1984 whereas Respondents' stand is that he was regularized on 09-01-1991. But the Respondents have placed no material in support of their claim of regularization of the applicant w.e.f. 09-01-1991. The order under Annexure-A/4 dated 28.03.2005 clearly evidences that the applicant was eligible to first financial up-gradation under ACP w.e.f. 16.8.1994 and in fact the same was granted with effect from the <sup>relevant</sup> ~~cutoff~~ date i.e. 1.10.1999 obviously taking into consideration 50% service from the date of conferment of temporary status till regularization [01-01-1981 to 01-04-1984 =3 years 3 months 50% of which comes to 1 years 7 months 15 days] and 100% from the date

of regularization till 16-08-1984 which comes to 10 years 4 months and 15 days. In other words 1 year 7 months 15 days + 10 years 4 months and 15 days =12 years]. In view of the above the plea of the Respondents that the applicant would be completing 24 years of service is bereft of any record and reason. It is, therefore, held that the applicant is entitled to second financial up-gradation w.e.f. 15.08.2006. Hence, the order under Annexure- A/7 dated 30-10-2008 is hereby quashed being without due application of mind, unreasoned and bereft of record. The Respondents are therefore, directed to grant the Applicant 2<sup>nd</sup> financial up-gradation w.e.f. 18.08.2006 and accordingly pay him arrear dues within a period of 120 days from the date of receipt of copy of this order.

5. In the result, this OA stands allowed to the extent stated above. No costs.

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

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