

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 597 of 2010

Cuttack this the *06th* day of January, 2011


Sudhansu Mohan Kanungo Applicant


-Versus-

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(J)


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

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CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)
AND
THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

.....
Sudhansu Mohan Kanungo, aged about 52 years, Son of
Madhusudan Kanungo permanent resident of
Raghunathpur, PO. Sankheswar, Via-Tirtol, Dist. Cuttack
at present working as a Motor Mechanic Gr.III, Office of
CWM/CRW/East Coast Railway/Mancheswar,
Bhubaneswar, Dist. Khurda.

.....Applicant

By Legal practitioner: M/s. N.R.Routray, S.Mishra,
T.K.Choudhury, Counsel

-Versus-

1. Union of India, represented through the General Manger,
East Coast Railway, Rail Vihar, Chandrasekharpur,
Bhubaneswar, Dist. Khurda.
2. Chief Workshop Manager, Carriage Repair Workshop,
East Coast Railway, Mancheswar, Bhubaneswar, Dist.
Khurda.
3. Workshop Personnel Officer, Carriage Repair Workshop,
Eat Coast Railway, Mancheswar, Bhubaneswar, Dist.
Khurda.

....Respondents

By the Advocate(s)... Mr. M.K.Das, Counsel.

ORDER

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

Applicant is at present working as a Motor Mechanic

Gr.III in the office of the CWM/CRW, East Coast Railway,

Mancheswar, Bhubaneswar in the District of Khurda. According

to him, on 05.04.1988 he joined in the Railway as a Skill

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Artisan (Motor Mechanic) in the scale of pay of Rs.950-1500/-.

Subsequently, on 03.09.1991 he was regularized in the post of Technician Gr.III (Motor Mechanic) in the pay scale of Rs.950-1500/-. On 06.05.2004, the Applicant was placed in the pay scale of Rs.4000-6000/-by way of granting first financial up-gradation under ACP scheme w.e.f. 03.09.3003 and he was granted incentive in the grade pay of Rs.2400/-. The incentive granted to the Applicant on the grade pay of Rs.2400/- was reduced, by the order under Annexure-A/4 and he was granted the incentive in the Grade Pay of Rs.1900/-. Applicant along with all similarly situated employees, by making representation dated 07.04.2010, sought restoration of their incentive on the grade pay of Rs.2400/- as was granted to them earlier.

Meanwhile, Railway Board issued instruction clarifying the issue on the payment of incentive to its employees under Annexure-A/7 dated 23.02.2010. Challenging such action of the Respondents, the Applicant approached this Tribunal in OA No.199/2010. As the representation of the Applicant was pending and no decision was communicated to him thereon, on 03.05.2010, this Tribunal disposed of the matter at the admission stage directing the Respondents to consider and

dispose of the pending representation of the applicant and until then there should be no reduction of the incentive of the Applicant. Respondents considered and disposed of the representation of the Applicant upholding their decision that the Applicant was/is not entitled to the incentive at the grade pay of Rs.2400/-. The reasons for reaching such decision was communicated to him in Annexure-A/10 dated 01.10.2010. Thereafter, challenging the said decision of the Respondents, the Applicant has approached this Tribunal in the present OA seeking to quash the order of rejection under Annexure-A/10 dated 01.10.2010 with further prayer to direct the Respondents to grant him incentive at the Grade Pay of Rs.2400/- instead of at the Grade Pay of Rs.1900/-.

2. The argument put forward by the Applicant in support of the relief claimed in this OA is that to over come the financial hardship faced by a family due to stagnation in promotion, as a safety net measure, on the basis of the policy decision of the Government, Railway introduced the benefit of granting two financial up gradation under the ACP scheme after completion of 12/24 years of service having no promotion. Accordingly, applicant was granted first financial up gradation

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vide order dated 6.5.2004 w.e.f. 03.09.2003 from the scale of Rs.3050-4590 to the scale of pay of Rs.4000-6000/- and revised scale of Rs.5200-20200/- with grade pay of Rs.2400/- w.e.f. 01.01.2006. Accordingly, the Applicant was granted the incentive on the grade pay of Rs.2400/- but the Respondents suddenly without due application of mind reduced the incentive amount of the applicant by stating that he is entitled to such incentive on the grade Pay of Rs.1900/- instead of on the grade pay of Rs.2400/-. According to the Applicant this decision of the Respondents was on the basis of the wrong interpretation of the Railway Board's instruction under Annexure-A/7; although the clarification issued by the Railway Board under Annexure-A/7 is not applicable to the applicant. In this connection by filing copy of the Railway Board instruction dated 09.07.2010, he submitted that the decision of the Railway in reducing the incentive of the Applicant is not justified.

3. Respondents filed their counter in which it has been stated that there was no wrong in reducing the incentive of the Applicant. The reduction was made by following the Railway Board's instruction under Annexure-A/7. However, to make the matter crystal clear it has been stated by the Respondents that

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there are two patterns of incentive scheme prevailing in the Indian Railway; one is Chittaranjan Pattern and the other one is Group Incentive Scheme. Hourly rates are applicable to CRJ patterns and Bonus factor relates to GIS. The GI Scheme has been implemented at Mancheswar Work Shop and the incentive Bonus had been paid to the Applicant on the basis of minimum salary in a Grade to which an artisan belongs. Subsequently it was amended on the basis of minimum basic pay in the present scale of pay to which an Artisan belongs vide Railway Board's instruction under Annexure-A/1 to the MA. After implementation of 6th Pay Commission payment of incentive Bonus was made according to the Railway Board on the basis of Grade Pay of Rs.2400/- vide RBE No. 194/2009 (Annexure-R/1). Subsequently a clarification was received from the Railway Board vide Annexure-A/7 in which it was provided that incentive payment should be decided on the basis of post/designation held by the employee and the hourly rate/bonus factor corresponding to the post/designation. Since the applicant is holding the post of Tech. Gr.III and based on his designation the incentive bonus has been paid with the corresponding bonus factor under Annexure-R/1. Further it has been stated by the



Respondents that after the modification of the ACP scheme into MACP, the Applicant is getting the Grade Pay of Rs.2400/-. Originally the applicant is holding the post/designation of Tech. Grade III. As such the Grade Pay of the employees under Tech Grade III is Rs.1900/- and as such, in term of the clarification of the Railway Board under Annexure-A/7 the incentive Bonus of the applicant has been calculated and paid on the basis of the Grade Pay of Rs.1900/-. In terms of the RBE No. 194/2009 (Annexure-R/1) the rates of incentives bonus and bonus factor of workshop/PU in respect of staff under CRJ pattern/GIS has been revised and subsequently clarified by Railway board vide letter under Annexure-A/7 for payment of incentive bonus on the basis of designation/post held by the employees and not by Grade or Scale. As the applicant is holding the post of Tech. Grade III, there was no wrong in calculating his incentive bonus in the Grade Pay of Rs.1900/-. According to the Respondents, the order dated 09.07.2004 relating to the period of 5th Pay Commission it has no bearing on the revision of the incentive which was made by way of implementation of the report of the 6th Pay Commission and on the basis of RBE No. 194/2009 dated 29.10.2009. Next stand, in the counter is that the MACP is



in supersession of previous ACP scheme and clarification issued there under shall be applicable to all regularly appointed Group A, B and C Railway employees except officers of the organized Group A service in terms of RBE 101/2009 dated 10.6.2009 of para 3 (Annexure-R/3). Hence they have prayed that as there was no wrong in the decision of reduction of the incentive on the basis of the RBE No. 194/2009, this OA is liable to be dismissed.

4. Applicant has also filed rejoinder enclosing thereto copy of the letter of the Railway Board dated 09.07.2004 as Annexure-A/11.

5. Learned Counsel appearing for both sides have reiterated the stand taken in their respective pleadings and having heard them at length, perused the materials placed on record. According to us, the only deciding factor in this case is whether the entitlement of the Applicant will be governed on the basis of the Railway Board's instruction/clarification under Annexure-A/7 or under Annexure-A/11. In view of the above, we do not feel it necessary to record all those arguments advanced by the parties by way of reiterating the stand taken in their respective pleadings. Unquestionably, the applicant is

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holding the post of Motor Mechanic Gr.III in the scale of pay of Rs.3050-4590/- with grade pay of Rs.1900/- and he was granted the first financial up-gradation to the scale of Rs.4000-6000/- with grade pay of Rs.2400/-. The Railway Board's instruction under Annexure-A/11 dated 09.07.2004 reads as under:

“Sub: Denial of incentive bonus to staff placed in higher grade under ACP scheme-Mancheswar Workshop East Coast Railway.

1. Para 11 of the Railway Board's letter of even No. dated 29.06.2003 reads as follows:

“The bonus factor of the incentive eligible staff shall be calculated on the basis of minimum of salary in a grade to which an artisan belongs multiplied by an adhoc equalizing factor of 1.3. The bonus factor would remain constant for a grade irrespective of the basic salary of an artisan.”

2. Now the above said Para is amended as follows:-

“The bonus factor of the incentive eligible staff shall be calculated on the basis of minimum basic pay in the present scale of pay to which an artisan belongs multiplied by an ad hoc equalizing factor of 1.3. The bonus factor would remain constant for a scale irrespective of the basic salary of an artisan.”

Railway Board's instruction under Annexure-A/7 dated 23.2.2010 reads as under:

“Sub: Revision of hourly rates of incentive bonus and bonus factor of Workshops/Pus in respect of staff under CRJ pattern/GIS-clarification.

Ref: Board's letter of even no. dated 29.10.09,

Vide Board's letter under reference, the revised hourly rates of incentive bonus and bonus factor of workshops/Pus were advised to the Railways. Some of the Railways have

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sought certain clarifications regarding implementation of above instructions. The details of issues raised and the clarifications are given below:

i. Issue: Date of revision of incentive bonus in case of SSE/SE (Grade Pay 4600/-);

Clarification: The revised rates in case of SSEs/SEs (Grade Pay 4600/-) will be effective from 1.6.09.

ii. Issue: category of supervisors who are entitled for incentive.

Clarification: SSEs/SEs directly supervising the staff working on the shop floor are entitled for payment of incentive bonus at a flat rate of 15% of the basic pay. For related issues kindly refer to Board's letter No.99/M(Prod.)/814/35 dated 22.5.2000 and 16.4.2004.

iii. Issue: Guidelines for reduction of 5% in allowed time.

Clarification: Workshops/Pus may reduce the normalized time for individual activity in such a manner that the overall allowed time for that activity is reduced by 5%.

iv. Issue: Payment of incentive to staff and supervisors on getting the benefit of Modified Assured Career Progression (MACP).

Clarification: Incentive payment should be decided on the basis of the post/Designation held by the employee and the hourly rate/bonus factor corresponding to that post/designation."

5. On a close reading of both the instructions i.e. Annexure-A/7 and A/11 of the Railway Board, we have absolutely no doubt to hold that the instruction under Annexure-A/7 which is the basis of the reduction of the incentive has no application to the case of the Applicant as it basically deals with

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regard to payment of incentive and bonus to the SSEs/SEs and incentive to staff and supervisors on getting the MACP and in general that incentive payment should be decided on the basis of the post/Designation held by the employee and the hourly rate/bonus factor corresponding to that post/designation whereas in Annexure-A/11 it is clearly provided that the incentive of eligible staff shall be calculated on the basis of minimum basic pay; in other words, once the applicant is placed in the higher basic pay with grade pay, he is entitled to the incentive on the basis of the grade pay attached to the pay scale. The applicant is not in the grade pay of Rs.1900/-. As such decision of reduction and payment of incentive on the grade pay of Rs.1900/- is not sustainable being not in consonance with the instruction of the Railway Board's instruction under Annexure-A/11. Accordingly, we hold that the Applicant is entitled to the incentive on the grade pay of Rs.2400/- and there should be no depletion of the same as long as Annexure-A/11 is in force. Respondents are therefore, directed that any deduction already made on the strength of the decision to pay the incentive on the grade pay of Rs.1900/- shall be refunded to the Applicant



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forthwith but not later taken 30 days from the date of receipt of the copy of this order.

6. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


(A.K.PATNAIK)
MEMBER(JUDL.)


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

