

19
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 684 of 2010

Cuttack this the 24th day of April, 2013

CORAM

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

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Binata Jena, aged aboutyears, W.o. Ramachandra, Ex. Masson Gr.III, O/o.Dy.Chief Engineer/Con/East Coast Railway, CTC, permanent resident of Vill-Lage Kurkura, PO-Khurda, Dist-Balasore

...Applicant

By the Advocate(s)-M/s.N.R.Routray

S.Mishra

T.K.Choudhury

-VERSUS-

Union of India represented through

1. The General Manager, East Coast Railways, Rail Vihar, Chandrasekharpur, Bhubaneswar, District-Khurda
2. The Senior Personnel Officer (Con) East Coast Railways, Rail Vihar, Chandrasekharpur, Bhubaneswar, District-Khurda
3. The Chief Administrative Officer (Con), East Coast Railways, Rail Vihar, Chandrasekharpur, Bhubaneswar, District-Khurda
4. The Deputy Chief Engineer(Con), East Coast Railway, Station Bazar, Cuttack

...Respondents

By the Advocate(s):Mr.B.K.Mohapatra

ORDER

HON'BLE SHRI R.C.MISRA, MEMBER(A)

This Original Application has been filed by one Binata Jena, widow of Ramachandra, Ex. Masson , Gr.III of the East Coast Railways.

2. The short case of the applicant is that her husband was engaged as Casual BH Painter on 24.10.1967 in the South Eastern



13

2

Railways and was subsequently, granted Temporary Status on 1.1.1981 and finally, his service was regularized with effect from 1.4.1988 as a Skilled Masson, Gr.III. He retired from service on 31.7.2004 on attaining the age of superannuation.

3. He had earlier filed an Original Application before this Tribunal bearing No.401/2006 praying for grant of 1st financial upgradation under the ACP Scheme. The Tribunal decided the matter by an order dated 5.3.2008. In fact this was an order covering six similar Original Applications. The Tribunal in order dated 5.3.2008 in those OAs directed the Respondents, viz., the Railway Authorities to confer the benefit of upgradation under the ACP Scheme (after completion of 12 years of service) on all the applicants and accordingly revise their pay and pension retrospectively from the date(s) of their entitlement. The Respondent-Railways approached the Hon'ble High Court by filing W.P.(C) No.15000/2008 challenging the orders of this Tribunal. However, the Hon'ble High Court, on 28.1.2009 dismissed the said Writ Petition and confirmed the orders passed by this Tribunal, upon which the Respondent-Railways implemented the order of the Tribunal dated 5.3.2008 and granted the 1st financial upgradation with effect from 1.4.2002 and accordingly, revised the pension dues of the applicant's husband. In the meantime, the applicant's husband died on 13.7.2009 and thereafter, on 22.3.2010, the applicant submitted a representation to Respondent No.3, wherein she prayed for granting of 1st financial upgradation with effect from 1.10.1999 instead of 1.4.2002 on the ground that her husband was granted Temporary

2

14
Status with effect from 1.1.1981 and his service was regularized on 1.4.1988 and therefore, on 1.10.1999, he had completed more than 15/14 years of qualifying service. Respondent No.3 disposed of this representation vide order dated 1.6.2010 which is placed at Annexure-A/8 of this O.A. In this impugned order, Respondent No.3 counted the regular service of 12 years as Masson, Gr.III with effect from 1.4.1990, the date of his regularization against the post of Masson, Gr.III and accordingly, decided to grant 1st financial upgradation with effect from 1.4.2002.

4. The ground of challenge of this impugned order taken by the applicant in this O.A. is that in the said impugned order, it has been admitted by the Respondents that the applicant's husband was granted temporary status with effect from 1.1.1981 as Masson, Gr.III and subsequently, he was regularized with effect from 1.4.1988 against Group-D PCR Post and further, he was regularized as Masson, Gr.III with effect from 1.4.1990 against PCR Post. The Railway Board in their order dated 31.3.2004 ²has given some clarification regarding financial upgradation under the ACP Scheme which is to the effect that a decision has been taken that 50% of Temporary Status casual labourer 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 reckoned as qualifying service for pension. The applicant has pleaded that this circular of the Railway Board has not been taken into consideration by the Respondents while

2

4

5

calculating the 12 years period for grant of 1st financial upgradation under the ACP Scheme. If 50% of the casual service with temporary status is counted along ^{with} 100% of regular service, then the deceased husband of the applicant would complete more than 15/14 years qualifying service as on 1.10.1999. Therefore, it is argued that the deceased husband of the applicant had completed more than 12 years qualifying service as on 1.10.1999, the date ^{of} on which the ACP Scheme was started. The short prayer of the applicant is, therefore, that the 1st financial upgradation under the ACP Scheme should ^{be} granted from 1.10.1999 and consequently, the differential financial benefits, viz., arrears on salary, leave salary, DCRG, commuted value of pension and pension etc. should be paid to the applicant.

5. During the course of hearing of this matter, it was admitted by the learned counsel for the Respondents that the applicant's husband was conferred with temporary status with effect from 1.1.1981 and then he was regularized on 1.4.1988 and further regularized as Masson, Gr.III in the scale of Rs.3050-4590/- with effect from 1.4.1990. Between 1.1.1981 and 1.4.1988, applicant's husband had rendered more than seven years casual service with temporary status. Therefore, as per the Railway Board's circular dated 31.3.2004, 50% of this period, i.e., at least 3 ½ years' service needs to be counted for the purpose of fixing the date for entitlement to 1st financial upgradation under the ACP Scheme. In view of this matter, the date of granting of financial upgradation, i.e., 1.4.2002 as

6

10 5
mentioned in the impugned order will have to be ante-dated to 1.10.1999. Accordingly, he admitted that this position has to be rectified by the Respondents. It was also mentioned by him that similar benefits have been given to similarly placed persons.

6. In view of the above submissions, the impugned order dated 1.6.2010 as at annexure-A/8 is quashed. Respondents are directed to re-fix the date of sanction of 1st financial upgradation under the ACP Scheme with effect from 1.10.1999. Consequently, therefore, the financial benefits that would accrue as a result of this change will have to be fixed by the Respondents and to that extent a fresh order needs to be issued by the Respondents in this regard conferring necessary financial benefits. All the admissible dues shall be paid to the applicant as early as possible.

7. Ordered accordingly.

Accordingly, the O.A. is allowed to the extent indicated above.

No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

BKS