

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.64 of 2011  
Cuttack this the 28<sup>th</sup> day of March, 1016

Baidhara Khatua...Applicant

-VERSUS-  
Union of India & Ors...Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? No
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? No

*Revi*  
**(R.C.MISRA)**  
**MEMBER(A)**

*Vall*  
**(A.K.PATNAIK)**  
**MEMBER(J)**

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**O.A.No.64 of 2011**

Cuttack this the 28<sup>th</sup> day of March, 1016

CORAM  
HON'BLE SHRI A.K.PATNAIK, MEMBER(J)  
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Baidhara Khatua  
Aged about 62 years  
S/o. late Rangia Khatua  
Vill-Tarasa  
PO-Marjitapur  
Via/PS-Nenapur  
Dist-Jajpur  
Retd.Driller Grade-III  
Office of Deputy Chief Engineer/Construction  
East Coast ailway  
Rail Vihar  
Bhubaneswar

...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 Railway  
Rail Vihar  
Chandrasekharpur  
Bhubaneswar  
Dist-Khurda
2. Senior Personnel Officer, Construction/Coordination  
East Coast Railway  
Rail Vihar  
Chandrasekharpur  
Bhubaneswar
3. Deputy Chief Engineer, Construction  
East Coast Railway  
Rail Vihar  
Chandrasekharpur  
Bhubaneswar



4. Senior Divisional Financial Manager  
East Coast Railway  
Khurda Road Division  
At/PO-Jatni  
Dist-Khurda

...Respondents  
By the Advocate(s)-Mr.R.S.Behera

**ORDER**

**R.C.MISRA, MEMBER(A)**

Applicant is a retired employee under the Respondent-Railways, who retired on superannuation with effect from 30.9.2009. In this Original Application under Section 19 of the A.T.Act, 1985, his grievance is directed against the order dated 11.1.2011(A/7) whereby and whereunder, his prayer for grant of 1<sup>st</sup> ACP in his favour has been turned down by the respondent-railways.

2. Facts of the matter as revealed in the O.A. are that applicant had initially been engaged in the erstwhile S.E. Railways and was granted temporary status with effect from 1.1.1981. While working as such, he was brought over to regular establishment vide order dated 16.7.1992. Thereafter, his service was regularized retrospectively with effect from 01.04.1984 against 40%/60% posts of Technician Gr.II carrying the scale of Rs.750-940/- Vide order dated 16.7.1992, the railway administration brought all the skilled, semi-skilled and unskilled staffs under one umbrella by regularizing their services in the scale of Rs.750-950/- Although service of the applicant was regularized in the scale of Rs.750-940/- vide

order dated 16.7.1992, but he had never received the same pay scale. On the other hand, he was in receipt of pay in the scale of Rs.950-1500/- with effect from 01.01.1986.

3. Consequent upon the recommendations of 5<sup>th</sup> CPC introducing Assured Career Progression (in short ACP) Scheme, the Railway Administration introduced the same with effect from 1.12.1999. As per the provisions of the Scheme, two financial upgradations on completion of 12 and 24 years' service during the service career of a railway employee are admissible provided that he/she has not earned any promotion in the meantime. However, if one promotion has already availed by an employee, he/she shall be considered for 2<sup>nd</sup> financial upgradation on completion of 24 years' service in the promoted grade.

4. While the matter stood thus, some of the employees in the Railways were recommended by the Screening Committee for grant of 1<sup>st</sup> financial upgradation with effect from 01.04.2000 and to this effect, approval order had already been issued by the competent authority on 8.10.2003. However, vide order dated 8.10.2003 approving grant of 1<sup>st</sup> ACP stood cancelled as per order dated 22.6.2005 passed by the railway authorities. This formed the subject matter of O.A.Nos.660, 663,740 of 2005 and O.A.Nos.185 of 2007 and 432 of 2008. This Tribunal vide order dated 22.11.2007 quashed the impugned order dated 22.6.2005 and directed the respondents to grant 1<sup>st</sup>

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financial upgradation under the ACP Scheme in view of the fact that applicants had completed 12 years regular/qualifying service. This Tribunal in its order dated 22.11.2007 held that the very first appointment was/is as Bridge Khalasi and as such no promotion had been given during their service career.

5. Applicant submitted representations dated 11.05.2009 and 16.02.2010 enclosing copy of order dated 23.11.2009 of this Tribunal in O.A.No.432 of 2008 praying therein for grant of benefit of the said order, as his case is squarely covered by the aforesaid decision of this Tribunal. Since the applicant did not receive any response, he moved this Tribunal in O.A.No.457 of 2010. This Tribunal vide order dated 14.09.2010 disposed of the said O.A. with direction to respondents to consider the grievance of the applicant in the light of the decision of this Tribunal and of the Hon'ble Apex Court and grant him relief as due and admissible under the rules/scheme. In compliance of the orders of this Tribunal, respondent no.2 issued a speaking order by rejecting his claim. This order is dated 11.01.2011(A/7) which is impugned and the subject matter of challenge in this O.A.

6. It is the case of the applicant that on his superannuation a Memorandum was issued by the respondents showing his initial appointment as 1.1.1981, date of PCR - 1.1.1984 and date of retirement as 30.09.2009 which works out to total length of qualifying service of 27 years 1 month and 14 days rendered by

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him. According to him, respondent no.2 while issuing the speaking order dated 11.01.2011 although made a mention that he had been promoted as a Skilled Driller, Gr.III in the scale of Rs.950-1500/- with effect from 24.07.1987 vide order No.106/1987 purely on ad hoc measure, but, finally, the said authority admitted that applicant had not been granted any regular promotion during his service period. It has been made clear vide order dated 16.7.1992 that applicant's service as Skilled Driller Gr.III with effect from 1.4.1984 though was regularized, yet, as on 15.07.1992, his status was as a casual labour with temporary status whereas as per the Railway Board's circular/rules, temporary status employee is not eligible for promotion. However, applicant has submitted that if any irregular or illegal promotion has been given to him, that should not stand in the way for grant of financial upgradation under the ACP Scheme. With these submissions, applicant has sought for the following relief.

- i) To quash the order of rejection dated 11.01.2011 under Annexure-A/7.
- ii) To direct the respondents to grant 1<sup>st</sup> financial upgradation w.e.f. 1.10.1999 under the ACP Scheme and pay the differential arrear salary from 1.10.1999 to 31.8.2008 by refixing his pay in the scale of Rs.4000-6000/- and corresponding to revision of scale of pay as per 6<sup>th</sup> Pay Commission with 12% interest.

7. By filing a detailed counter, respondent-railways have opposed the prayer of the applicant. According to respondents,

applicant had been engaged initially as Casual Khalasi with effect from 4.9.1972, attained temporary status with effect from 1.1.1981 and was regularized against PCR Gr.D post with effect from 1.4.1984 in the scale of Rs.196-232/-, 750-940/-, 2550-3200/-. He was promoted as Sk.Driller, Gr.III in the scale of Rs.950-1500/ purely on ad hoc basis with effect from 24.7.1987 vide office order No.106/87 and accordingly, his pay was fixed at Rs.950/-. It is the case of the applicant that applicant had never been regularized retrospectively with effect from 1.1.1984 in the grade of Technician, Gr.III PCR post instead, he had been regularized in Gr.D PCR post with effect from 1.1.1984. According to respondents, since applicant has already <sup>been</sup> given one promotion to the post of Technician, Gr.III, he is not entitled to 1<sup>st</sup> financial upgradation under the ACP Scheme.

8. Applicant has filed a rejoinder to the counter which reads more or less the same <sup>as</sup> averments as in the O.A.

9. We have perused the pleadings of the parties and heard the learned counsel for both the sides.

10. From the pleadings of the parties, the short point to be considered is whether respondents while considering the claim of the applicant have scrupulously followed the conditions of ACP Scheme to the case of the applicant.

11. In order to decide the point in issue, it is prudent to quote hereunder the relevant part speaking order dated 11.1.2011(A/7).

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"On verification of your service record, it is seen that you were engaged in railway as Casual Labour/KSI w.e.f. 09.1972 and subsequently was attended Ty. Status w.e.f. 01.01.1981. Further, you were promoted as Skilled Driller in the scale Rs.950-1500/3050-4590 w.e.f. 24.07.1987 vide DEN©/CTC's Office Order No.106/87 purely on adhoc measure. You were absorbed against 40%/60% PCR post w.e.f. 01.05.1984 against Gr.D post in scale Rs.750-940/2550-3200 vide erstwhile DPM(Reg.)/CTC's Memorandum No.E/45/738 dated 16.07.1992. Though you were regularized in Gr.D PCR post in scale Rs.750-940/2550-3200/- was allowed to continue in higher grade on adhoc basis as Skilled Driller in scale Rs.950-1500/3050-4590/- due to exigency of work and subsequently retired from railway service w.e.f. 30.09.2009 due to superannuation of age. You were not granted any regular promotion during your service period.

In terms of Estt.Srl.No.288/99 and 64/2004, as per hierarchy you are eligible for 1<sup>st</sup> financial upgradation w.e.f. 01.10.1999 in scale Rs.2650-4000/- after completion of 12 years of regular service on 16.08.1994 over your substantive post. Further, you are eligible for 2<sup>nd</sup> financial upgradation w.e.f. 17.8.2006 in scale Rs.3050-4590/- after completion of 24 years of regular service as on 16.08.2006 over your substantive post.

Since you have already been holding the scale of pay of Rs.3050-4590/- on adhoc basis w.e.f. 24.07.1987 and retired from railway service w.e.f. 30.09.2009, drawing the same scale of pay & grade pay, you are not entitled for further benefit under ACP Scheme".

12. From the above, the undisputed position is that applicant had initially joined as Casual Labour/KSI with effect from 09.1972 and was conferred with temporary status with effect from 01.01.1981. While working as such, he was promoted as Skilled Driller in the scale Rs.950-1500/3050-4590 with effect from 24.07.1987 vide DEN©/CTC's Office Order No.106/87

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purely on ad hoc measure. Thereafter, he was absorbed against 40%/60% PCR Gr.D post with effect from 01.05.1984 against in the scale of Rs.750-940/2550-3200 vide Memorandum No.E/45/738 dated 16.07.1992 (A/1).

13. Applicant has not disputed regarding his promotion as an adhoc measure to the post of Skilled Driller, Gr.III while working as Casual Khalasi with temporary status. On the other hand, he has ~~he has~~ recriminated the action of the respondnets by stating that there is no provision in the railways to grant promotion to a Casual Khalasi with temporary status and even if any irregular or illegal promotion has been given the same should not stand in the way ~~for~~ <sup>of</sup> grant of financial upgradation under the ACP Scheme. By this applicant has made his endeavor to digress from the material facts germane to the issue. It is to be noted that conditions of ACP Scheme clearly stipulate that 1<sup>st</sup> financial upgradation shall be allowed after completion of 12 years of regular service. If that be so, applicant's regular service has to count with effect from 01.05.1984, when he was absorbed against 40%/60% PCR Gr.D vide Memorandum dated 16.07.1992 (A/1). Therefore, applicant's entry grade being considered as Gr.D there was no irrationality on the part of the respondents to reckon regular service for the purpose of benefits under the ACP Scheme, albeit he was continuing in the post of Skilled Driller, Gr.III on ad hoc basis. Nothing has been produced by the applicant to establish that applicant's regular

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service had commenced in the grade of Skilled Driller, Gr.III who retired from service without however, availing any promotion. Might be he had been promoted on ad hoc basis to Skilled Driller, Gr.III with effect from 24.07.1987. But the fact remains, his absorption against 40%/60% Gr.D PCR post took place with effect from 01.05.1984, which is much prior to the date of his ad promotion to Skilled Driller, Gr.III and this position holds good. If according to applicant, his entry grade was Skilled Driller, Gr.III, it is not understood as to what prevented him from challenging the order dated 16.07.1992 when he was absorbed against Gr.D PCR post carrying a lower scale of Rs.750-940/2550-3200/- . No doubt the railway authorities allowed him to continue in higher grade on adhoc basis as Skilled Driller in scale Rs.950-1500/3050- due to exigencies of services. But this cannot accrue a right on him to claim that his entry grade and/or substantive post or regular posts being Skilled Driller, Gr.III should be taken into account for the purpose of 1<sup>st</sup> ACP. Financial benefits under the ACP Scheme being personal to the employee concerned, determination for grant of such benefit would count based on the regular service rendered by him/her. The Tribunal while sitting in judicial review over such matters is only concerned whether the authorities, while considering such claims, have scrupulously followed the conditions as embodied therein. In the same breath, in order to decide the entitlement or



otherwise of the claim ~~of~~ under the ACP Scheme, it is not for the Tribunal to at first hold an opinion on the status of an aggrieved litigant and thereafter, form an opinion on his/her entitlement.

14. At this stage, it is pertinent to mention that applicant has placed ~~reliance~~ on an earlier decision of this Tribunal in O.A.No. 432 of 2008 disposed of on 23.11.2009 (A/4) to buttress his claim wherein the Tribunal had held that the very first appointment was/is as Bridge Khalasi as such no promotion had been given during service career of the applicant therein. We are at a loss to understand as to how this decision supports his case. In our considered view, the facts in the case in hand being distinguishable to the facts of the above referred decision of this Tribunal, is of no assistance, more particularly when ACP Scheme being personal to the employee concerned, his service profile is the predominant factor for consideration in that behalf.

15. Having regard to the discussions held above, we hold that the respondent-railways while considering the claim of the applicant have scrupulously followed and applied the conditions of ACP Scheme to the ~~attainment~~ of service career ~~by~~ of the applicant and since he has retired on superannuation with effect from 30.6.2009 in the promoted post of Skilled Driller, Gr.III, rightly it has been held that he is not entitled to the 1<sup>st</sup>

financial upgradation under the ACP Scheme. Consequently, the impugned order dated 11.11.2011(A) is sustained.

In the result, the O.A. is dismissed. No costs.

  
**(R.C.MISRA)**  
**MEMBER(A)**

  
**(A.K.PATNAIK)**  
**MEMBER(J)**

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