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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.191 of 2011

Cuttack this the 23rd day of November, 2015

Mahadeb...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *yes*
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? *yes*

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

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.191 of 2011

Cuttack this the 25th day of November, 2015

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

Mahadeb
Aged about 62 years
Son of late Narayan
Via-Meramundali
Dist-Dhenkanal
Retired Technician (Welder) Gr.III/Engineering/Construction
East Coast Railway
Jajpur Keonjhar Road

...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
Chandrasekharapur
Bhubaneswar
Dist-Khurda
2. Senior Personnel Officer
Construction/Coordination
East Coast Railway



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Rail Vihar
Chandrasekharapur
Bhubaneswar
Dist-Khurda

3. Deputy Chief Engineer/Construction
East Coast Railway
Jajpur Keonjhar Road
4. Chief Administrative Officer/Con.
East Coast Railway
Chandrasekharapur
Bhubaneswar

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

ORDER

R.C.MISRA, MEMBER(A):

Applicant is a retired Railway employee. While working as Technician(Welder, Gr.III) he retired from railway service with effect from 30.6.2010. His grievance is directed against non-extension of benefit under the Assured career Progression (in short A.C.P.) Scheme with effect from 1.10.1999. Therefore, in this Original Application he has approached this Tribunal seeking the following relief.

- i) To quash the order dated 15.02.2011 under Annexure-A/8.
- ii) To direct the respondents to grant 1st financial upgradation with effect from 1.10.1999 and pay the differential arrear salary from 1.10.1999 to 31.8.2008 by fixing his pay in the scale of Rs.4000-6000 and corresponding to revision of scale of pay as per 6th Pay commission with 12% interest by extending benefit of order under Annexure-A/4.

- iii) And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.

2. Facts of the matter as revealed in the O.A. are narrated as under: Initially, applicant had been engaged in the S.E. Railways. He was granted temporary status on 1.1.1981 and while working as such, he was brought over to regular establishment with effect from 1.4.1988 vide order dated 16.7.1992. His service was again regularized against 60% PCR post of Technician, Gr.III with effect from 1.4.1988 in the scale of Rs.3050-4590/- vide office order dated 7.6.1999. In the meantime, ACP Scheme came into force with effect from 1.12.1999 providing 1st and 2nd financial upgradations to the employees under the railways on completion of 12 and 24 years service respectively, on the condition that no regular promotions have been availed of by an employee. In the above background, the Screening Committee which met on 15.9.2003 made recommendations for granting 1st financial upgradation in favour of some other incumbents with effect from 1.4.2000, which however, having been approved by the competent authority, the benefit was extended vide order dated 8.10.2003. While the matter stood as such, respondent no.2 vide order dated 22.6.2005 cancelled the benefit of 1st ACP granted vide order dated 8.10.2003. This gave rise to litigations in OA Nos.

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660, 665, 740 of 2005 and O.A.No.185 of 2007 filed by the persons affected by the order dated 22.6.2005. This Tribunal, vide order dated 22.11.2007 quashed the impugned order dated 22.6.2005 and directed the respondent-railways to grant 1st ACP when the applicants had completed 12 years regular(qualifying) service. This Tribunal further held that the very first appointment was/is as Bridge Khalasi as such no promotion has been given during service career. This matter, according to applicant, is covered by the decision of this Tribunal in O.A.No.432 of 2008 – disposed of on 23.11.2009. In the circumstances, applicant preferred a representation dated 18.1.2010 to the respondent-authorities for grant of 1st ACP with effect from 1.10.1999 in keeping with the order passed by this Tribunal in O.A.No.432 of 2008, with consequential financial benefits. He also made a prayer for grant of 2nd financial upgradation under the MACP Scheme, as he had already completed 20 years regular service. In the meantime, on attaining the age of superannuation, applicant retired from service with effect from 30.6.2010. Since no decision on his representation was forthcoming, applicant moved this Tribunal in O.A.No.649 of 2010 and this Tribunal, vide order dated 27.10.2010 directed the respondents to consider his representation and pass a reasoned and speaking order. In implementation of the orders of this



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Tribunal, respondents issued office order dated 15.2.2011(A/8) , which is impugned and the subject matter of challenge in this O.A.

3. In the counter respondent-railways have at the outset, raised the point of maintainability on the ground that the O.A. as laid is grossly barred by limitation inasmuch as applicant has submitted documents showing that he had been regularized against PCR post way back vide Office Order dated 16.7.1992 and therefore, he cannot travel to that situation or position by challenging the orders of absorption.

4. According to respondents, applicant was initially appointed as casual Bridge Khalasi on 5.12.1972 and was granted temporary status with effect from 1.1.1981 in the scale of rs.210-290/-, subsequently, revised to Rs.800-1150/- and continued as such upto 31.3.1984, when vide order dated 16.7.1992, he was absorbed against 60% PCR quota on 1.4.1984 and ~~was~~^l worked upto 24.6.1987 as Bridge Khalasi. Subsequently, applicant was called upon ^{to} participate in the trade test (mandatory for Gr.C, Tech.category) and after passing the same, he was promoted to officiate as Sk. Rivetter vide order dated 25.6.1987. This promotion was regularized vide order dated 7.6.1999 with effect from 1.4.1988. According to respondents, applicant having been promoted from Brigde Khalasi to Rivetter, Gr.III on regular basis with effect from 1.4.1988, he is not entitled to 1st ACP. Since, applicant has been given



one promotion before completion of 12 years, he is entitled to 2nd ACP on completion of 24 years' service. As per orders of the Tribunal dated 27.10.2010, Railway-Administration granted 2nd financial upgradation from the scale of Rs.3050-4590/- to Rs.4000-6000/- with effect from 16.8.2006 on completion of 24 years regular service and all arrears payment arising out of that have also been paid to the applicant. In the circumstances, it has been submitted that the O.A. being devoid of merit is liable to be dismissed.

5. Applicant has filed rejoinder to the counter by filed by the respondents. According to him, his status as a casual labourer with temporary status was as on 15.7.1992, because his service for the first time was regularized retrospectively with effect from 1.4.1984 vide order dated 16.7.1992. Therefore, applicant has asserted that respondents should prove their stand that he was promoted to the post of Sk.Rivetter, Gr.III vide office order no.8287 dated 25.6.1987. According to applicant, this was the stand point of the respondents in O.A.No.185 of 2007 whereas this Tribunal rejected the same and allowed the O.A. It is the case of the applicant that during his service career as on 1.10.1999, he has not earned any promotion.



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6. We have heard the learned counsel for both the sides and perused the pleadings of the parties. We have also gone through the written notes of submission filed by both the sides.

7. Admittedly, applicant had been engaged as casual Bridge Khalasi on 5.12.1972 and was granted temporary status with effect from 1.1.1981. According to applicant, while working as such, he was brought over to regular establishment with effect from 1.4.1988 vide order dated 16.7.1992 for the 1st time and again his service was regularized retrospectively with effect from 1.4.1988 against 60% PCR post of Technician, Gr.III in the scale of Rs.4050-4590/- vide order dated 7.6.1999(A/1). On the other hand, it is the case of the respondents that applicant continued with temporary status from 1.1.1981 in the scale of Rs.210-290 (subsequently revised to Rs.800-1150/-) upto 31.3.1984 and as per DPM/Reg./CTC Memorandum No.E/45/738 dated 16.7.1992, he was absorbed against 60% PCR quota on 1.4.1984 and worked upto 24.6.1987 as Bridge Khalasi. Thereafter, having been qualified in the trade test, he was promoted to officiate as Sk.Rivetter, Gr.III vide DEN(Reg.) O/O. No.82/1987 dated 25.6.1987 followed by regularization with effect from 1.4.1988 vide A/1 dated 7.6.1999. From the above, the dispute centers round regarding regularization of the applicant consecutively with effect from a



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particular date, i.e., 1.4.1988 in the post of Bridge Khalasi as well as Sk.Rivetter, Gr.III.

8. In the written notes of submission, applicant has brought to the light that for the 1st time applicant's service was regularized vide order dated 16.7.1992 in the scale of Rs.750-940/- retrospectively with effect from 1.4.1984 and for the 2nd time vide order dated 7.6.1999 in the scale of Rs.4050-4590 retrospectively, with effect from 1.4.1988.

9. A most significant fact in issue that emerges from the above recital of facts is that the applicant's initial engagement being casual Khalasi, he was granted temporary status with effect from 1.1.1981 and subsequently, regularized as Bridge Khalasi with effect from 1.4.1984, which is a group-D post. Order dated 7.6.1999(A/1) makes it clear that applicant while continuing on ad hoc basis as Sk.Rivetter, was regularized with effect from 1.4.1988, which is a Gr.III post. From this, the immediate inference that only could be drawn is that applicant having entered into service as casual Khalasi, his service could not have been regularized as Sk.Rivetter, which is a Gr.III post with effect from 1.4.1988 and the regularization that has admittedly taken place with effect from 1.4.1984 is against Bridge Khalasi, which is a Gr.D post and in the circumstances, applicant's regularization in the post of Sk.Rivetter, gr.III is only by way of promotion and nothing else.



10. In support of his case, applicant has relied on the decision of this Tribunal in O.A.No.432 of 2008 (Kailash vs. UOI) disposed of on 23.11.2009 and we have gone through the same. In that case, it was brought to the notice of the Tribunal that applicant therein and one Kulamani Prusty had been granted temporary status with effect from 1.1.1981 and both of them were regularized in the post of Saranga, Gr.III in the scale of Rs.260-400/- and that both of them were granted 1st financial upgradation under ACP Scheme with effect from 1.4.2000. This financial benefit having been withdrawn vide order dated 22.6.2005, Kulamani Prusty had earlier approached the Tribunal in O.A.No.185 of 2007 and the said O.A. was allowed vide order dated 16.12.2008 by quashing the order dated 22.6.2005. Consequently, respondent-railways restored the benefit that had been granted to Kulamani Prusty. In view of this, it was the contention of the applicant in O.A.No.432 of 2008 that facts of his case were akin to that of Kulamani Prusty. The Tribunal in O.A.No.432 of 2008 held that ***"no document has also been produced by the respondents in spite of adequate opportunity to show that the applicant had ever been promoted nor have they substantiated their stand by producing any material that the applicant was not regularized in the post of Sarang Gr.III, but was promoted to the said."*** Therefore, the Tribunal came to a finding that the stand taken by the respondents in the present



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case (O.A.No.432 of 2008) was exactly the same stand taken by them in the case of Kulamani Prusty in O.A.No.185 of 2007^e. In the fitness of things, the relevant part of the order dated 16.12.2008 in O.A.No.185 of 2007 (Kulamani Prusty vs. Union of India) is extracted hereunder.

"It has been stated by the respondents in their counter that the applicant was initially engaged as casual Khalasi w.e.f. 4.8.1972 to 12.8.1972. Subsequently, he was re-engaged as casual mate w.e.f. 28.1.1974 to 3.5.1974 on daily rated basis. He was again reengaged and worked as casual Khalasi from 3.6.1978 to 13.06.1978. On 14.6.1978, he was promoted as casual mate and was granted temporary status w.e.f. 1.1.1981 and was absorbed in Gr.D PCR post w.e.f. 1.4.1988 as per para 2006 of the Indian Railway Establishment Manual, Volume II 1990 (revised edition). Thereafter on 25.6.1987, he was promoted on officiating basis to the post of Skilled Rivetor in the scale of pay of Rs.950-1500/- which scale was subsequently revised on the recommendations of the Vth Pay Commission to Rs.3050-4590/-. The applicant was regularized in a Gr.C PCR post as Skilled Rivetor, Gr.III in the scale of pay of Rs.3050-4590 with effect from 1.4.1988. The post of Rivetor subsequently was re-designated as Technician Gr.III. He was promoted as Skilled Rivetor w.e.f. 25.6.1987 and was not appointed as a Skilled post".

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"Heard rival submissions of the parties and perused the materials placed on record. By producing copy of the order dated 166 of 2006 dated 29th August, 2008 in the case of Babaji vs. UOI and others, learned counsel for the applicant submitted that as the issues involved in this O.A. have already been determined by this Tribunal and it is not necessary to go into details of the present matter and by applying the aforesaid decision, this OA needs to be allowed. Learned counsel appearing for the respondents has also not controverted the above stand. On examination of the facts of the present case vis a vis the case of Babaji (supra) we find that as

in that case, the respondents have not produced any impeachable documentary evidence in support of their plea that the applicant had ever been promoted to the higher post during 12/24 years of his service. As such we are of the opinion that there is no reason to differ from the view already taken by this Tribunal in the case of Babaji and consequently to quash the present impugned order under Annexure-A/10. We order accordingly and restore the order under which the applicant was granted the ACP benefits from Rs.3050-4590 to Rs.4000-6000/- w.e.f. 1.4.2000.

Resultantly, the applicant is entitled to get his pay, pension refixed and consequential retirement dues in the scale of Rs.4000-6000/-. We further direct the respondents to do so and refund the withheld/recovered amount of Rs.41,404/- to the applicant forthwith at any rate not beyond 45 days from the date of receipt of copy of this order, failing which the applicant would be entitled to interest @ Rs.12% per annum till the actual payment is made. With the aforesaid observations and directions this O.A. stands allowed".

12. We have examined the applicability of the decision of this Tribunal in O.A.No.432 of 2008 and O.A.No.185 of 2007 to the facts of the case in hand. However, in this context, it is to be noted that contrary to the facts in O.A.No. 166 of 2006 (Babaji vs.UOI) disposed of on 29.8.2008 wherein the Tribunal was of the opinion that the respondents had not produced any unimpeachable documentary evidence in support of their plea that the applicant had ever been promoted to the higher post during 12/24 years of service, in the present case the promotion order is very much available. Therefore, applicant's regularization in service with effect from 1.4.1984 stands uncontroverted and to this effect, respondents have in their counter



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mentioned in clear and unambiguous terms brought out to the notice of the Tribunal that vide DPR/Reg.CTC Memorandum No.E/45/738 dated 16.7.1992 applicant was absorbed against 60% PCR quota post on 1.4.1984 and worked upto 24.06.1987 as Bridge Khalasi. It is not the case of the applicant that as on 1.4.1984, he was holding the post of Sk.Rivetter, Gr.III. On the other hand, his ad hoc service as Sk. Rivetter, Gr.III stood regularized with effect from 1.4.1988 vide A/1 dated 7.6.1999. It is also not in dispute that the applicant had in fact appeared in the trade test for Gr.C Tech Category and on his passing out the same, he was promoted to officiate as Sk.Rivetter, vide DEN(Reg.) Office Order No.82 of 1987 dated 25.6.1987.

13. From the above analysis, it is self evident that applicant's service had been regularized with effect from 1.4.1984 in the Grade of Brigde Khalasi which is a Gr.D post and he was bestowed with promotion as Sk.Rivetter, Gr.III with effect from 1.4.1988, which we have already indicated above. Therefore, the decision relied on by the applicant in support of his case being distinguishable in facts is of no avail.

14. At this juncture, we would like to note that grant of financial benefits under the ACP Scheme is always subject to the conditions laid down therein. It is to be borne in mind that the basic feature of grant of benefit under the ACP Scheme is that ***"financial upgradation under the ACP Scheme shall be***

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purely personal to the employee and shall have no relevance to his/her seniority position. As such, there shall be no additional financial upgradation for the senior employee or the ground that the junior employee in the grade has got higher pay scale under the ACP Scheme. In addition to the above, it has been laid down in the scheme that residency periods (regular service) for grant of benefits under the ACP Scheme shall be counted from the grade in which an employee was appointed as a direct recruit".

15. Two important points which are worthy of being mentioned herein are as under.

16. Applicant has laid a claim that for grant of financial upgradation with effect from 1.10.1999 by filing representation in this regard in the year 2010. Therefore, this O.A. suffers from delay and laches by 10 years. Applicant has not explained as to what prevented him from approaching the Tribunal soon after 1.10.1999 when he was not granted the benefit of 1st ACP and as revealed from the facts, he acted as fence sitter in the matter of grant of such benefit.

17. Secondly, it is the specific case of the respondents in Para-10 of counter that applicant has never made any representation dated 18.1.2010 (A/3) to the respondents ventilating his grievance and this point has not at all been



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responded by the applicant in his rejoinder by submitting any irrefutable proof that he had filed such a representation before approaching the Tribunal in O.A.No.649 of 2010. This is the background, why the respondents while issuing office order dated 15.2.2011 has not made any reference to the representation of the applicant. For the sake of clarity, order contents of the order dated 15.2.2011 are extracted hereunder.

"In obedience to Hon'ble CAT/CTC's judgment & order dt. 27.10.2010 in O.A.No.649/2010 in the matter of Sri Mahadev, S/o.Narayan, retired Riveter, Gr.III - vrs. U.O.I. & Others the 2nd financial up-gradation under ACP Scheme from scale of Rs.3050-4590/- to scale Rs.4000-6000/-(RSRP 96) to granted w.e.f 16.08.2006 in favour of Sri Mahadev, S/o.Narayan retired Riveter, Gr.III under Dy.CE/C/JJKR retired from railway service on superannuation w.e.f. 30.06.2010. His settlement payment may please be processed accordingly".

18. However, consideration of the facts of the case clearly reveals that applicant's date of regularization is to be taken as 1.4.1984 as Bridge Khalasi and he was promoted as Sk.Rivetter, Gr.III vide order dated 25.6.1987. The promotion order was regularized by an order dated 7.6.1999. In view of these facts, applicant would be entitled to grant of 2nd MACP which has been granted with effect from 16.8.2006 vide impugned order dated 15.2.2011. We do not therefore, find any ground of intervention in the matter.



19. Having regard to what has been discussed in the preceding paragraphs, we hold that applicant has not been able to make out a case for any of the relief sought in this O.A. In the result, the O.A. is dismissed being devoid of merit. No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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