

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**O.A.No.866 of 2011**

Cuttack this the 7<sup>th</sup> day of April, 2016

CORAM

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

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

Kasinath ...Applicant

-VERSUS-

Union of India & Ors. ...Respondents

**FOR INSTRUCTIONS**

1. Whether it be referred to reporters or not? <sup>NO</sup>
2. Whether it be referred to CAT, PB, New Delhi for being referred to various Benches of the Tribunal or not? <sup>NO</sup>

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

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

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

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

Kasinath,  
Aged about 62 years  
S/o-late Padan  
Ex-Store Wath Man  
O/o.Deputy Chief Engineer©/JJKR  
East Coast Railway  
Permanent resident of Village-Krushnachandrapur  
PO-Serada  
Kakundapur  
Via/PS-Jenapur  
Dist-Jajpur

...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. Chief Administrative Officer(Con.)  
East Coast Railway,  
Rail Vihar  
Chandrasekharpur,  
Bhubaneswar  
Dist-Khurda
3. Senior Personnel Officer(Construction)  
East Coast Railway,  
Rail Vihar



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Chandrasekharpur,  
Bhubaneswar  
Dist-Khurda

4. Deputy Chief Engineer(Con.)  
East Coast Railway  
Jajpur Keonjhar Road  
At/PO-Jajpur Road  
Dist-Jajpur
5. Financial Advisor & Chief Accounts Officer/Construction  
East Coast Railway  
East Coast Railway,  
Rail Vihar  
Chandrasekharpur,  
Bhubaneswar  
Dist-Khurda

...Respondents

By the Advocate(s)-Mr.B.B.Pattnaik

**ORDER**

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

Applicant is a retired employee under the East Coast Railways. In this Original Application filed under Section 19 of the A.T.Act, 1985, he has sought for the following relief.

- i) To direct the respondents to revise the scale of the applicant to PB-I Rs.5300-2000/- with GP Rs.1800/- and pay the differential arrears salary, DCRG and pension.
- ii) To direct the Respondents to release the commuted value of pension with 12% interest for the delayed period.

2. The sum and substance of the facts are that initially, applicant had been engaged as casual Gangman under the respondent-railways on 25.10.1979 and was conferred with temporary status with effect from January, 1983. Subsequently,



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his service was regularized against 40%/60% PCR posts with effect from 1.4.1988.

3. While working as Store Watchman under res.no.4, applicant fell ill and was admitted in the Divisional Railway Hospital Medical, Khurda Road. After a prolonged treatment, he appeared before the Medical Board on 3.11.2006, which declared him permanently unfit in all categories of service under the Railways with effect from 13.11.2006. This declaration having been accepted by the competent authorities, unfit certificate No.Spl./143 dated 22.12.2006 was issued by the Medical Superintendent, Khurda Road and the same was forwarded to res.no.4 for further action and in the above background applicant was discharged from the railway service.

4. Since retirement dues of the applicant were not settled, he moved this Tribunal in O.A.No.324 of 2010. This Tribunal, vide order dated 29.6.2010 disposed of the said O.A. with direction to respondent-railways to consider and dispose of representation dated 16.3.2009 submitted by the applicant through a reasoned order. Thereafter, respondents issued PPO No.PEN/E.Co.R/KUR/12020000111/PEN/29 dated 6.1.2011 in favour of the applicant.

5. Grievance of the applicant in the instant O.A. is the respondent-railways have settled pension and pensionary benefits in his favour by taking into account the pre-revised scale, but not the revised scale as recommended by the 6<sup>th</sup> CPC.

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According to applicant, had the respondents taken into account the revised scale while calculating his pension and pensionary benefits, he would have been granted the Grade Pay with the increase in pension and pensionary benefits and in this regard, applicant has brought to the notice of the Tribunal the PPO issued in his favour to show that no Grade Pay has been given therein. It is the further submission of the applicant that ventilating his grievance, he has preferred a representation dated 14.2.2011(A/6) to the Senior Personnel Officer, East Coast Railway, who is res.no.3 in this O.A. and having received no response, he has moved this Tribunal in this O.A. seeking relief as referred to above.

6. Respondent-railways have filed a detailed counter opposing the prayer of the applicant. At the outset, they have raised a point of maintainability of this O.A. on the ground that applicant without availing the departmental remedies has approached this Tribunal.

7. On the merit of the matter, it has been urged that as per Railway Board's Circular (RBE No.103/2008 dated 4.9.2008) applicant ought to have exercised his option with three months from the date of publication of the above circular as a token of acceptance of the rules and regulation of the 6<sup>th</sup> PC with a view to drawing new pay scale as prescribed therein. After expiry of the stipulated period of 03 months, the preparation of settlement dues in 6<sup>th</sup> PC was not considered in view of sub-



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para No.3 of Para-6. Further, as per the provision mentioned under Note No.3 of sub-para-4 of Para No.6, persons who were on earned leave or any other leave on 1.1.2006 which entitled them to leave salary will be allowed the benefit of this rules. However, applicant had applied for 355 days sanctioned leave without pay (18.02.2005 to 7.2.2006), 223 days absent into leave without pay (08.02.2006 to 18.09.2006) and 55 days sick leave without pay. According to respondents, the nature of leave availed by the applicant does not entitle him to leave salary and therefore, the question of revision of his pay according to 6<sup>th</sup> CPC in his case does not arise.

8. Applicant though has filed rejoinder, he has not answered this vital point as raised in the counter.

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

10. Rule-6 of RBE No.103/2008 dated 4.9.2008 deals with exercise of option. Foot Note-3 appended thereto lays down that ***"Persons who were on earned leave or any other leave on 1.1.2006 which entitled them to leave salary will be allowed the benefits of this rule"***.

11. Admittedly, applicant has not exercised his option within three months from the date of publication of RBE No.103/2008 with a view to fixation of his pay in the revised pay scale by accepting the provisions enshrined therein. It is also not in



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dispute that the kind of leave availed of by the applicant as on 1.1.2006 does not entitle him to leave salary. In view of this, we do not find any illegality to have been committed by the respondents in the matter of settlement of pension and pensionary benefits vide PPO dated 6.1.2011. Since the applicant was not entitled to get his pay revised based on the recommendations of the 6<sup>th</sup> CPC and to that effect RBE No.103/2008 stands in the way, we are of the view that applicant has not been able to make out a case for any of the reliefs sought by him. In the result, the O.A. being devoid of merit is dismissed. No costs.

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

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

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