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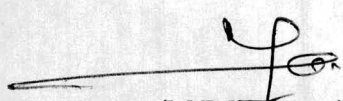
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


O.A.No. 302 of 2009

Cuttack, this the 21st day of September, 2010

V.D.Vincent Applicant
Versus
Union of India & Ors. Respondents

1. Whether it be referred to the reporters or not? *no*
2. Whether it be circulated to all the Benches of the Tribunal? *yes*


(M.R. Mohanty)
Vice-Chairman(J)


(C.R. Mohapatra)
Member (Admn.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A. No.302 of 2009

Cuttack, this the ~~21st~~ day of September, 2010

CORAM

THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN (J)

AND

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

Shri V.D.Vincent, aged about 54 years, S/o. Devassy permanent resident of Badakkethala House Po.Manakody, Dist. Trichur, Kerala-680 017, at present working as Technician Gr.II office of Deputy Chief Engineer Construction, ECoRly, Cuttack. Applicant

By legal practitioner: M/s. N.R.Routray, S.Mishra, Counsel

-Versus-

1. Union of India represented through its General Manager, E.Co.Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar.
2. The Chief Administrative Officer (Con.), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Sr. Personnel Officer, Construction/Coordination, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. Deputy Chief Engineer (Con.), ECoRly, Cuttack, At-Station Bazar, PO. College Square, Town/Dist. Cuttack. Respondents

By legal practitioner: Mr.T.Rath, Counsel

ORDER

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

This Original Application filed by the Applicant V.D.

Vincent, working as Technician Gr.II in the Office of the Deputy Chief Engineer, Construction, E.Co.Railway, Cuttack under section 19 of the A.T. Act, 1985 seeking direction to the Respondents to grant him financial up-gradation w.e.f. 01.10.1999 under the ACP scheme and consequential benefits (differential arrears salary) by re-fixing pay in scale of Rs.4500-7000/-.

2. Denying to have received the representations under Annexure-A/3, A/4 and A/5, Respondents have prayed for dismissal of this OA being hit by law of limitation as the applicant has approached this Tribunal much after the period of limitation prescribed under section 21 of the A.T.Act, 1985. By relying on the decision of the Hon'ble Apex Court in the case of **K.V.Raja Lakshmiah v State of Mysore**, AIR 1967 SC 993, **State of Orissa v Sri Pyarimohan Samantaray**, AIR 1976 SC 2617, **State of Orissa**

v Arun Kumar, AIR 1976 SC 1639, C.Jacob v Director Geology and Mining and another, AIR 2009 SC 264 it has been contended that repeated representations cannot be adequate ground to save the delay.

As regards merit of the matter, it is contended by the Respondents that the applicant was initially engaged as casual skilled revitter I S.E.Railway under BRI (Reg.), Mahanadi Bridge, Kendrapara Road on 13.03.1976. While he was working as Temporary H.S.Sarang Gr.II in scale of Rs.330-480/-, he was granted temporary status w.e.f. 1.1.1982 and confirmed in Gr.D PCR post in scale of Rs.750-940/- w.e.f. 1.4.1988 against 40%/60% PCR post vide Memorandum dated 30.12.1992 pursuant to the decision of the Railway Board. Subsequently the applicant was regularized in the promotional post as Saranga Gr.III in scale of Rs.3050-4590/- w.e.f. 1.4.1988 against 60% PCR post vide order dated 7.6.99. Thereafter, following the same procedure he was once again regularized in promotional post of Saranga Revittor Gr.II in scale of Rs.4000-6000/- w.e.f. 1.4.1990 against 60% PCR post vide order dated 30.11.2001. Hence as the applicant has been granted two distinct and different higher promotional grade scale of pay such as Saranga Gr.III w.e.f. 1.4.1988 and Saranga Gr.II w.e.f. 1.4.1990 after his initial regularization in Gr.D during his 24 years of service, he is not entitled to the financial up-gradation under ACP scheme as claimed in this OA.

3. Learned Counsel appearing for both sides have reiterated the stand taken in their respective pleadings and having considered the rival submissions of the parties, perused the materials placed on record. Placing on record copy of the order dated 20th July, 2010 in OA No. 309 of 2009 (T.Sivadasan v UOI and others it was contended by Mr. Routray, Learned Counsel for the applicant that the ground taken by the Respondents was also the ground raised by the Respondents in the aforesaid OA. But this

Tribunal after taking into consideration the said grounds and materials placed on record allowed the prayer of the applicant therein. As the present case is covered by the said decision, this OA is to be allowed. In support of his stand that once relief has been granted on particular subject that should have been extended towards the other employees instead of insisting on all similarly situated employees to approach before court individually and the application filed by similarly situated employees should not be thrown on hyper technicality of law of limitation, he has relied on the decision of the Hon'ble Apex Court in the cases of **Union of India and others v K.C. Sharma** [reported in 2008(2) SCC (L&S) 783] and in the case of **Maharaj Krishna Bhatt and another v State of Jammu and Kashmir** [reported in 1997 (7) SCC 721]. Accordingly, he prayed that in view of the earlier decision of this Tribunal, in the case of T.Sivadasan, the applicant is entitled to the relief claimed in this OA. Mr.T.Rath, Learned Counsel appearing for the Respondents emphasizing the decisions relied on by him in the counter has objected to the prayer of the Applicant. It is trite law that the claim of the applicant is for grant of financial up-gradation under ACP. In case such benefit is granted to the applicant there would be no adverse effect to any third party. However, it is trite law that financial benefit is a recurring cause of action and delay cannot be a ground to frustrate such claim. None of the decisions relied on by Mr. Rath pertain to financial benefits. As such the said decisions are hardly of any help to the Respondents. It is also trite law (**SI Rooplal and others vrs. Lt. Governor through Chief Secretary Delhi and others**, (2000) 1 SCC 644) that the precedents are to be followed by the Tribunal. Hence, it is the positive case of the Applicant that the present case is covered by the case of T.Sivadasan (supra). Therefore, it is worthwhile to extract the relevant portion of the case of T.Sivadasan. It reads as under:



2. Respondents objected to the prayer of the applicant for grant of the first financial up-gradation on the ground that the case of the applicant is not covered under the scheme [Annexure-A/2] for grant of financial up-gradation as according to the Respondents, Applicant was initially engaged in the Railway on casual/daily wage basis from 18.10.1975 to 03.02.1979 under the PWI, CON, SE, Paradeep; got temporary status w.e.f. 01.01.1981. Upon acquiring temporary status, he was brought to the regular establishment in PCR post of Group D category w.e.f. 01.04.1988; placed as Sarang Gr.III in the pay scale of Rs.3050-4590/- and vide order dated 07.06.1999 he was regularized against Gr. C post. The applicant was promoted to the post of Sarang Gr.II in the scale of pay of Rs.4000-6000/- w.e.f. 1.4.1990 vide order dated 30.11.2001 (Anexure-R/2) on regular basis. As the applicant already earned promotion to the scale of Rs.4000-6000/- w.e.f. 1.4.1990 he is entitled to 2nd financial up-gradation in terms of the ACP scheme only after completion of 24 years of service.

3. Heard Mr.N.R.Routray, Learned Counsel for the Applicant and Mr. S.K.Ojha, Learned Standing Counsel for the Respondents and perused the materials placed on record. The contention of the Respondents that as the applicant was promoted to Sarang Gr.II w.e.f. 1.4.1990 he was not entitled to first financial up-gradation was disputed by the Learned Counsel for the Applicant. Relying on the documents enclosed by the Respondents to their counter, it was stated by Learned Counsel for the Applicant that the applicant was absorbed/appointed as Sarang Gr.II w.e.f. 1.4.1990 and it was not a promotion and as such, the applicant was entitled to the first financial up-gradation only after completion of 12 years of service which was unjustly denied to him. In support of the entitlement of the applicant, Learned Counsel for the Applicant has placed reliance on the decision of the Hon'ble High Court of Orissa dated 08.07.2008 in WP (C) No.7429 of 2009 (Union of India and others -v- Rathi Sahoo) and accordingly Learned Counsel for the Applicant has prayed for allowing the relief claimed in this OA.

On the other hand, relying on the decisions of the Hon'ble Apex Court in the case of **Union of India -v- Pusparani, (2008) 5 Supreme 513** and **Indian Drugs and Pharmaceuticals Ltd -v- Indian Drugs and Pharmaceuticals Employees Union, (2007) 1 SCC 408** has submitted that placement in the higher scale of pay amounts to promotion and, as the applicant has been placed in higher scale within 12 years from the date of his appointment, his case does not cover within the scheme of ACP. Accordingly, Respondents' Counsel has vehemently argued for dismissal of this OA.

4. We are constrained to note that in spite of adequate opportunity, no document has been produced by the Respondents substantiating their stand taken in the counter that the applicant had got promotion during 12 years of his service. The records produced do not disclose that the placement of the applicant from one scale to other was by way of promotion. We


have gone through the decisions relied on by Mr. Ojha, Learned Counsel for the Respondents. In numerous decisions of the Hon'ble Apex Court rendered over a span of nearly two decades it has been laid down and reiterated that a decision is a precedent on its own facts. Each case presents its own features and as such court should not place reliance on decision without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. In view of the above, on examination of the decisions relied on by Mr. Ojha it is noticed that the factual aspects of the matter being totally different and distinct, the same has no application to the present case. But when the factual scenario of the present case vis-à-vis the case relied on by the Applicant is examined, we find that the background of the legal principles set out therein has the fullest application to the present case. While the applicant vividly stated that his case is covered by the decision of the case of Rathi Sahoo (supra) this was not controverted by the Respondents either in the counter or by Mr. Ojha in course of hearing. Law is well settled in a plethora of judicial pronouncements that benefits of a decision should be extended to all similarly situated employees.

5. For the discussions made above, we find considerable force in the submission of Learned Counsel for the Applicant that denial of the benefit of first up-gradation in terms of ACP scheme under Annexure-A/2 to the Applicant is not at all justifiable; especially when the ACP Scheme specifically provides that the benefit ACP will not be available in the event of only on regular promotion and not placement in other scale. Accordingly, Respondents are hereby directed to grant the Applicant first financial up-gradation with payment of all consequential financial benefits w.e.f. 01.10.1999 within a period of ninety days from the date of receipt of this order. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs."

4. The very object of the ACP scheme is to over come the stagnation faced by an employee. In terms of the scheme the benefit of ACP is not available only in the event of regular promotion already granted to an employee and not because of placement in other/higher scale. Despite adequate opportunities, Respondents failed to strengthen their case by filing any piece of evidence that the applicant had ever been promoted to higher post. Perusal of documents shows that the applicant has been placed in higher scale but without any promotion. Hence, on examination of the case in hand vis-à-vis the case of T.Sivadasan (supra) earlier decided by this Tribunal, we find sufficient merit on the submission of the Learned Counsel for the

Applicant that by application of the ratio of the earlier order of this Tribunal, the applicant is entitled to the relief claimed in this OA. Accordingly, Respondents are hereby directed to consider grant of the ACP benefit w.e.f. 01.10.1999 and consequently the differential arrears of salary by re-fixing pay in scale of Rs.4500-7000/- within a period of 120 days from the date of receipt of copy of this order.

5. In the result, this OA stands allowed. No costs.


(M.R. Mohanty)
Vice-Chairman(J)


(C.R. Mohapatra)
Member (Admn.)