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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.309 of 2009
Cuttack, this the 20th day of July, 2010

T.Sivadasan Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *yes.*
2. Whether it be circulated to all the Benches of the CAT or not? *yes.*

M.R. Mohanty
(M.R. MOHANTY)
VICE-CHAIRMAN

C.R. Mohapatra
(C.R. MOHAPATRA)
MEMBER (ADMN.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.309 of 2009
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C O R A M:

THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

T.Sivadasan, aged about 54 years, son of Karaputty, permanent resident of Cheruthayil House, PO-Mannur, Dist. Calicut, Kerala-673324, at present working as Technician Gr.II office of Deputy Chief Engineer Construction, ECoRly, JJKR.

.....Applicant

By Legal Practitioner : M/s.N.R.Routray, S.Mishra, Counsel
- Versus -

1. Union of India represented through the General Manager, E.C.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/Coordination, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. Dy. Chief Engineer (Con.), E.Co.Railway, Jajpur Keonjhar Road, At/Po.Jajpur Road, Dist. Jajpur.

.....Respondents

By Legal Practitioner: Mr. S.K.Ojha, Standing Counsel.

O R D E R

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

Applicant, T.Sivadasan, is a Technical Gr.II in the office of the Deputy Chief Engineer Construction, ECoRly,JJKR. By filing this Original Application u/s.19 of the A.T.Act, 1985, he seeks direction to the Respondents to grant him the first financial up-gradation w.e.f. 01.10.1999 and pay him the consequential

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differential arrear salaries, as he has been stagnating in one post for last 12 years, in terms of the ACP scheme vide Annexure-A/2.

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

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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 does 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^{of} 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.


(M.R. MOHANTY)
VICE-CHAIRMAN


(C.R. MOHAPATRA)
MEMBER (ADMN.)