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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No.466 of 2009
Cuttack, this the 13th August, 2010

Chakradhar Applicant
-Versus-
Union of India & Others Respondents

C O R A M
THE HON'BLE MR.G.SHANTHAPPA, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

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Applicant, while working as Sk.Painter Gr. III in the office of the Deputy Chief Engineer, Construction, E.Co.Rly, JJKR retired from service w.e.f. 30.06.2005. By filing this Original Application under section 19 of the A.T. Act, 1985, he seeks the following reliefs:

- “(a) To direct the Respondents to grant financial up-gradation w.e.f. 01.10.1999 under the ACP Scheme and grant consequential benefits (differential arrear salary, DCRG commuted value of pension, leave salary and pension) by re-fixing pay in scale of Rs.4000-6000/-.”

2. By filing counter, Respondents contest the case of the Applicant and state that the applicant is not entitled to the relief claimed in this OA as his case does not come within the purview of the ACP scheme. They have contended that the applicant was initially appointed a Casual Khalasi on 05.12.1972 and in terms of the Railway Board instructions got the Ty.Status w.e.f. 01.01.1981 in the scale of pay of Rs.210-290. He was granted PCR status 40%/60% w.e.f. 01.04.1984 as per the OM dated 16.7.1992. But the service of the applicant was confirmed against Gr.D PCR post in the scale of pay of Rs.196-232/- w.e.f. 01.04.1993 which was subsequently raised to the pay scale of Rs.750-940/- as per letter dated 20.4.1993. This is the initial scale of PCR post and the service of a temporary status employee normally brought to the regular establishment of the railway and there is no provision existing in

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the railways to regularize his service against a higher scale by ignoring the initial regular scale. Though the staff had never received his salary in the initial scale from the date of his regularization but railways had favoured the said staff by granting higher scale of pay of Rs.210-290/- which was subsequently revised to Rs. 2650-4000/- as he was able to perform duty as semi skilled painting works. Hence granting of higher scale at the time of initial regularization may be treated as one kind of financial up-gradation or promotion to the applicant. It was further contended that the applicant also passed the trade test of the post of Painter Gr.III in the scale of pay of Rs.3050-4590/- as per the office order dated 30.11.2001 w.e.f. 1.4.1998. Thus he had got one financial up-gradation from scale of pay of Rs.2650-4000/- to Rs.3050-4590/-. To buttress their stand that change of scale of pay amounts to promotion the Respondents have also relied on the decision of the Hon'ble Apex Court in the case of Union of India and others v Pusparani, (2008) 5 Supreme 513 and have accordingly prayed for dismissal of this OA.

3. Heard Mr. Routray, Learned Counsel for the Applicant and Mr. S.K.Ojha, Learned Standing Counsel appearing for the Respondents and perused the materials placed on record. By relying on the ACP scheme it was submitted by Mr. Routray, Learned Counsel for the Applicant that one is not entitled to the benefit of financial up-gradation only in the event of regular promotion and as the applicant has not got any promotion he was entitled to the benefit of financial up-gradation under ACP. In support of his submission he has also relied on the decision of the Hon'ble High Court of Orissa dated 8.7.2008 in WP (C) No.7429 of 2008 (Union of India and others v Rathi Sahoo) as also of this Bench order dated 20th day of July, 2010 in OA No. 309 of 2009 (T.Sivadarsan v Union of India and others) and has prayed that since the present case is covered by the above decisions the applicant is entitled to

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the relief claimed in this OA. On the other hand besides reiterating some of the stand taken in the counter, it was submitted by Mr. Ojha, Learned Standing Counsel for the Respondents that as the applicant during his service career has jumped from one scale to other after the trade test and trade test is conducted only in the event of promotion, the applicant is deemed to have been promoted to higher post as such he was not entitled to the benefit under ACP as claimed in this OA.

4. On the previous date after hearing at length this matter was kept to today to verify from the service record as to whether the change of the scale of pay of the applicant was because of promotion. Today Mr. Ojha, Learned Standing Counsel for the Respondents produced the ~~Service~~ Service Book of the Applicant in original and we have perused the same. No where from the service book we could find that the applicant had ever been promoted or while change^{to} higher scale of pay had taken place there was any fixation of pay in the service sheet. Service Book of an employee is a valuable document and all ~~casualties~~ ^{Casualties} are supposed to be noted there. In spite of opportunity to Mr. Ojha, Learned Standing Counsel for the Respondents to produce any piece of evidence in support of the promotion of the applicant he failed to produce the same in support of his contention. It is seen that for the reason of non production of any order that the applicant had ever been promoted by the Respondents/Railway, the Hon'ble High Court of Orissa rejected the Writ Petition filed by the Respondents challenging the order of this Tribunal in the case of Rathi Sahoo (supra). Based on the aforesaid order and reason, as is evident, this Tribunal allowed the prayer of the Applicant in OA No. 309 of 2009 filed by T.Sivadasan (supra.). The aforesaid decision was received by this Tribunal even after taking into consideration the decision of the Hon'ble Apex Court in the case of Pusparani (supra) finding that the facts of the said

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case are totally different and distinct to the case of T.Sivadasan (surpa). The full text of the order of this Tribunal in the case of T.Sivadasan (supra), for better appreciation is quoted herein below:

"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 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 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.

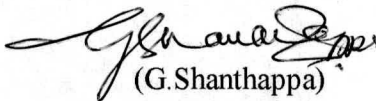
4. We are constrained to note that in spite of adequate opportunity, no document has been produced by the Respondents substantiating their stand taken in the counter that the applicant had got promotion during 12 years of his service. The records produced does not disclose that the placement of the applicant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

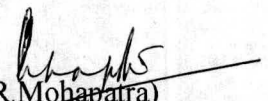
5. For the discussions made above, we find considerable force in the submission of Learned Counsel for the Applicant that denial of the benefit of first up-gradation in terms of ACP scheme under Annexure-A/2 to the Applicant is not at all justifiable; especially when the ACP Scheme specifically provides that the benefit 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."

5. From the aforesaid order it is evident that the points taken by the Applicant in this case were also the grounds canvassed by the Respondents' Counsel in the earlier case and taking into consideration all the contentions raised this Tribunal allowed the prayer of the applicant therein and no additional material having been placed by the Respondents, we find no reason to differ from the view already taken in the aforesaid case. It is also not the case of the Respondents that the earlier order of this Tribunal has been reversed/set aside or stayed on review by the higher forum or by this Tribunal.



Since Respondents failed to substantiate their stand by producing any document showing that the applicant has ever been promoted which is a precondition for denying the benefit under ACP, we are constrained to adhere to the earlier decision of this Tribunal in the present case also. 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."


(G. Shanthappa)
Member (Judl.)


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