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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

OA No.190 of 2010  
Cuttack, this the 23rd day of February, 2012

Sudhansu Mohan Kanungo .... Applicant  
Versus  
Union of India & Ors .... Respondents

FOR INSTRUCTIONS

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

  
(A.K.PATNAIK)  
MEMBER (JUDICIAL)

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

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

And

THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)

.....  
Sudhansu Mohan Kanungo, aged about 52 years, Son of  
Madhusudan Kanungo, permanent resident of  
Raghunathpur, PO. Sankheswar, Via-Tirtol, Dist. Cuttack at  
present working as a Motor Mechanic Gr.III, Office of  
CWM/CRW/East Railway  
/Mancheswar,Bhubaneswar/Dist.Khurda.

....Applicant

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

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandraekhaprur, Bhubaneswar, Dist. Khurda.
2. Chief Workshop Manager, Carriage Repair Workshop, East Coast Railway, Mancheswar, Bhubaneswar, Dist. Khurda.
3. Workshop Personnel Officer, Carriage Repair Workshop, East Coast Railway, Mancheswar, Bhubaneswar, Dist. Khurda.

....Respondents

By legal practitioner -Mr.S.K.Ojha, Standing Counsel

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O R D E R

Applicant, in this OA, seeks to quash the order under

Annexure-A/8 dated 01/02-07-2010 and to direct the Respondents to grant 1<sup>st</sup> Financial Up-gradation w. e. f. 05-04-2000 by re-fixing his pay in the scale of Rs.4000-6000/- and to pay him the differential arrear salary from 05-04-2000 to 02-09-2003.

2. Respondents filed their counter in which it has been stated that this OA besides being devoid of any merit is also liable to be dismissed on the law of limitation. It has been stated by the Respondents that the applicant on being selected initially joined as

Trainee Artisan in the trade of Motor Mechanic on 05-04-1988 with stipendiary pay of Rs.950/- p.m. The Applicant was never appointed against any regular working post. However, after completion of training on 2.9.1991, the applicant was appointed against the working post only on 03.09.1991. The ACP scheme does not envisage for taking into consideration the period spent on training by a Trainee Apprentice for the purpose of counting the period for grant of the financial up gradation under ACP. Therefore, the Screening Committee had rightly taken into consideration the period of the applicant from 3.9.1991 and approved his case for extension of the financial benefit under ACP w.e.f. 2.9.2003. They have stated that the RBE No. 69 of 2004 deals with regard to counting the period of service of casual employees after getting temporary status and regularization and, therefore, has no application to the case of the Applicant.

3. The Applicant has filed rejoinder more or less reiterating the stand taken in his OA.

4. We have heard learned Counsel for both sides and perused the materials placed on record. Grant of financial up gradation under ACP being a recurring cause of action, we do not find any justification on the stand of the Respondents that this OA is liable to be dismissed being hit by the law of limitation. Hence the said plea is hereby over ruled.

5. In this OA, the dispute is in regard to counting the period of service from the date of initial engagement of the applicant as Trainee Artisan till completion of his training period i.e. 02.09.1991 followed by regular absorption. The applicant

joined as Trainee Artisan w.e.f. 5.4.1988 and as it appears as per the order of this Tribunal dated 15.10.1990 he was regularized in the existing skilled Artisan Gr.III post vide order under Annexure-A/2 dated 3.9.1991 with immediate effect in the existing skilled artisans Gr.III with usual allowances. Hence it has been contended by learned counsel for the applicant as the applicant was regularized and granted all benefits with effect from the date when he joined as trainee artisan non counting said period of service is not sustainable in the eyes of law. He has further contended that the Respondents rejected the claim of the applicant vide Annexure-A/8 without answering the specific points raised by him in his representation under Annexure-A/7 at paragraph 3 in this regard and as such the order of rejection is without due application of mind. In paragraph 3 of his representation the applicant has stated as under:

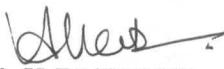
“3. That the Screening Committee found me and others suitable for grant of 1<sup>st</sup> financial up gradation vide order dtd.06.05.2004 after declaring me pass in the trade test meant for the post of Technician Gr.II (Motor Mechanic). At the time of grant of 1<sup>st</sup> financial up gradation the screening committee taken into account the regular service from the date of order of regularization i.e. from 03.09.1991. As such 12 years of regular service comes to 03.03.2003. It is respectfully submitted here that in my order of regularization my date of joining is shown as 05.04.1988 and as per my appointment order I was engaged as a Skilled Artisan Gr.III (Motor Mechanic) in scale of Rs.950-1500/-. As such the screening committee wrongly not taken my 100% service from 05.04.1988 to 02.09.1991 as qualifying service for grant of 1<sup>st</sup> financial up gradation under ACP scheme. If my service from 05.04.1988 to 02.09.1991 would have been taken into account as qualifying service by the screening committee then instead of 03.09.2003 I would have been granted 1<sup>st</sup> financial up gradation w.e.f. 01.10.1999. Moreover, the Railway Board clarification dtd.31.03.2004 has

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also not taken into account otherwise instead of 03.09.2003 I would have been granted 1<sup>st</sup> financial up gradation w.e.f. 01.12.2001."

6. None of the parties have produced the copy of the order dated 15.10.1990 of this Tribunal. However it is the specific case of the applicant that the applicant has been allowed all the service benefits except counting the period for the purpose of grant of the ACP benefits. If it is so, then non counting the said period for the purpose of counting the ACP benefit is not sustainable. But in absence of any concrete material in this regard, we are unable to take any positive view on the same. But we find that the order of rejection under Annexure-A/8 is without answering the specific points raised by the Applicant in this regard in his representation under Annexure-A/7. Hence we are constrained to quash the said order of rejection under Annexure-A/8 and the same is accordingly quashed and the Respondents are hereby directed to reconsider the representation of the applicant at Annexure-A/7 and pass a reasoned order within a period of 60(sixty) days from the date of receipt of copy of this order.

7. In the result with the above observation and direction this OA stands disposed of. There shall be no order as to costs.

  
(A.K.PATNAIK)  
Member (Judicial)

  
(C.R.MOHAPATRA)  
Member (Admn.)