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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No.192 of 2010
Cuttack, this the 22nd day of March, 2012

Chitaranjan Mohanty Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(A.K.PATNAIK)
Member(Judl)


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

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

And

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

.....
Chitaranjan Mohanty, aged about 54 years, Son of Late
Maguni Mohanty permanent resident of
Village/PO.Kaduapada, Dist. Jagatsinghpur at present
working as a Machinist Gr.III, Office of CWM/CRW/East
Coast 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, Chandrasekharpur,
Bhubaneswar, Dist. Khurda.
2. Chief Workshhop Manager, Carriage Repair Workshop,
East Coast Railway, Mancheswar, Bhubaneswar, Dist.
Khurda.
3. Workshop Personnel Officer, Carriage Repair Workshop,
East Cosast Railway, Mancheswar, Bhubaneswar, Dist.
Khurda.

....Respondents

By Legal Practitioner - Mr.S.K.Ojha, SC

ORDER

C.R.MOHAPATRA, MEMBMER (ADMN.):

The Applicant who is working as Machinist Gr.III in

the Office of the
CWM/CRW/ECorly,Mancheswar,Bhubaneswar submitted
representations dated 13.07.2007 and 12.4.2010 requesting
grant of 1st Financial Up-gradation w.e.f. 28.03.2000 and for
payment of differential arrear salary from 28.3.2000 to

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02.09.2003 by re-fixing his pay in the scale of Rs.4000-6000/.

The said request was rejected and communicated to him vide letter under Annexure-A/7 dated 01-02.07.2010. It reads as under:

"In this regard it is mentioned here that you were appointed as trainee Skilled Artisan in scale Rs.950-1500/-PB with GP 1900/- (VIth PC) on 29.03.88 and regularized against working post w.e.f. 03.09.91. In terms of para 4 (Annexure) of Estt.Srl.No.288/99, 1st financial up-gradation was granted to scale 4000-6000/- w.e.f. 03.09.03 after completion of 12 years regular service from date of regularization i.e. 03.09.91 under ACP scheme vide this office order dtd. 06.05.2004. As per extant rule the period from 05.04.88 to 03.09.91 which was not treated as regular service and the same was not taken into account as qualifying service for 1st financial up-gradation under ACP 1999.

Secondly the Railway Board's clarification dtd.31.03.2004 (RBE No. 69/2004) as mentioned by you in your representation says regarding extension of the scope to the ACP scheme to the staff appointed as casual labour. In the said letter Railway Board has decided to count 50% of temporary status of casual labour service on absorption as regular employment for granting financial up gradation in the ACP scheme. It means 50% of the period between temporary status and regularization in case of casual labour shall be taken into account while computing the qualifying service for grant financial up gradation of such nature staff. But in your case it is not applicable as you were not appointed initially casual labour.

As regard granting financial up gradation under MACPS in terms of Railway Board's letter RBE No. 101/2009 it is to say that as per para 9 of Annexure of the said letter the regular service shall be counted for the purpose of granting financial up gradation under MACP. Accordingly, you will be eligible for 2nd financial up gradation on 03.09.2011 under MACPS on completion of 20 years regular service from 03.09.1991.

Therefore, as per rule you have been granted 1st financial up gradation under ACP scheme w.e.f. 03.09.2003 and 2nd financial up gradation will be granted on completion of 20 years service from 03.09.1991 i.e. on 03.09.2011. The question of payment of differential arrears as mentioned by you does not arise."

2. Being aggrieved by the above communication under Annexure-A/7, the applicant has approached this Tribunal in the instant OA with prayer to quash the order under Annexure-A/7 dated 01/02-07-2009 and to direct the

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Respondents to grant 1st Financial Up-gradation w. e. f. 28.03.2000 and pay the differential arrear salary from 28.3.2000 to 02.09.2003 by re-fixing his pay in the scale of Rs.4000-6000/.

2. According to the Respondents, by filing this OA on 27th January, 2011, the applicant sought direction to the Respondents for grant of Financial Up-gradation w. e. f. 28.03.2000 which is clearly barred by limitation as provided under section 21 of the A.T. Act, 1985 and as such, is liable to be dismissed.

In so far as merit of the matter, it is the case of the Respondents that on being selected, the applicant, initially joined as Trainee Artisan in the trade of Motor Mechanic on 29-03-1988 with stipendiary pay of Rs.950/- p.m. He 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

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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. Accordingly, Respondents have opposed the case of the applicant on merit also and have prayed for dismissal of this OA.

3. In the rejoinder the applicant while stating that the applicant had completed six months training in the month of October, 1988 and not on 2.9.1991 as stated by the Respondents it was stated that had the RBE No. 69/2004 dated 31.3.2004 been taken into consideration by the Screening Committee the applicant would have been granted the relief which he claimed in this OA. It was stated that the applicant was initially appointed on temporary basis and as per IREM temporary appointment means appointment in regular establishment. Therefore, the service rendered as a temporary employee will be computed as qualifying service for the purpose of pension. Therefore, the service rendered by the applicant as a temporary skilled artisan ought not to have been ignored by the Respondents as qualifying service for the

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purpose of counting the period towards ACP. According Applicant has reiterated the relief claimed in this 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 of 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. The issue involved in this case is wether the applicant's service from 1988 to 1991 can be taken into account for the purpose of grant of ACP. Mr. Ojha, Learned Standing Counsel for the Respondent-Railway pointed out that this case is similar to OA No. 190 of 2010 and therefore, the order passed by this Tribunal in the said case can also be made applicable to the present OA. Relevant portion of the order in OA No. 190 of 2010 is extracted herein below:

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

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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 1st 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 1st 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 1st 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 1st financial up gradation w.e.f. 01.10.1999. Moreover, the Railway Board clarification dtd.31.03.2004 has also not taken into account otherwise instead of 03.09.2003 I would have been granted 1st 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.

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

6. This was objected to by Learned Counsel for the Applicant on the ground that the applicant was appointed as Trainee Artisan in a particular scale of pay (Rs.950-1500/-). He has been granted annual increment since 29.03.1988 and, as such the period of service from 1988 onwards should be reckoned for the purpose of counting reckonable service for grant of JACP. Although the applicant was appointed as Trainee Artisan on a stipend of Rs.950/-, subsequently vide order under Annexure-A/1 dated 03-09-1991 he was allowed the scale of pay of Rs.950-1500/- from the date of the order. During the course of hearing, Learned Standing Counsel for the Respondents produced before us the service sheet of the applicant. On perusal of this document it reveals that increment has been granted to the applicant on Annual basis w.e.f. 29.03.1988 in terms of Establishment Srl. No.109/92 and his pay was accordingly refixed. We have perused the Estt. Srl. No. 109/92 whereunder the Railway have decided that the period of training will be treated as duty for the purpose of grant of increments to those railway servants who have undergone such training on or after 01-01-1986. It has further been provided therein (Estt.Srl.No.109/92) that the benefit of

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counting the period for pay will be admissible on notional basis from 1.1.1986 and on actual basis from 01-10-1990. In view of the above the contention of the Respondents that the period spent by the applicant a Trainee Artisan and hence is not reckonable for the purpose of ACP cannot be accepted. Since the period from 1988 onwards has been treated as duty and pay has been refixed allowing annual increments though on notional basis, there cannot be any ambiguity on the issue that the said period of service cannot be taken into account for the purpose of reckonable service for grant of ACP.


7. As far as the contention of the Respondents' counsel that this case being covered by the order of this Tribunal in OA No. 190/10, can be disposed of by leaving the matter to the authorities to examine the case of the applicant, as directed in the aforesaid OA, we do not find justifiable reason to do so because in the earlier OA, we had no occasion to peruse the Estt. SI.No.109/92 and the service sheet of the said applicant while passing order in OA No. 190/10.


8. In view of the discussions made above, the order of rejection at Annexure-A/7 cannot be held to be justified and the same is accordingly quashed. The Respondents are hereby directed to count the period of service of the applicant from

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29.3.1988 for the purpose of grant of ACP and allow the applicant financial benefits under ACP if he fulfills the other conditions required for grant of financial up-gradation under ACP. Respondents are further directed to complete the entire exercise within a period of 90 days from the date of receipt of copy of this order.

9. Accordingly, this OA stands allowed. There shall be no order as to costs.


(A.K.PATNAIK)
Member (Judicial)


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