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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 247 OF 2010
CUTTACK, THIS THE 19th DAY OF January, 2012

Banamali..... Applicant

Vs

Union of India & Others..... Respondents

FOR INSTRUCTIONS

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


(A.K.PATNAIK)
MEMBER (JUDL.)


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

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NO. 247 OF 2010
CUTTACK, THIS THE 18th DAY OF January, 2012**

CORAM :

**HON'BLE MR. C.R.MOHAPATRA, MEMBER(ADMN.)
&
HON'BLE MR. A.K.PATNAIK, MEMBER(JUDL.)**

Banamali, aged about 63 years, Son of Late Indira, retired Gangman/stores/E.Co.Rly/BBSR, Permanent resident of Vill.-Garudagaon, PO: Nakhara, Via- Choudwar, Dist.-Cuttack.

.....Applicant

Advocate(s) for the Applicant- M/s N.R.Routray, S. Mishra,
T.K.Choudhury

VERSUS

1. Union of India represented through the General Manager, East Coast Railways, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Chief Administrative Officer (Con.), East Coast Railways, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Sr. Divisional Personnel Officer, Construction/Coordination, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. F.A. & C.A.O. (Con), East Coast Railways, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
5. Deputy CMM/Stores, E. Co. Rly., Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

..... Respondents

Advocates for the Respondents – Mr. P.C.Panda.

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ORDER

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

Applicant, in this O.A., claims that he was engaged as a Casual Khalasi under P.W.J(C)/S.E.Rly/Haridaspur in the year 1965 and was brought over to regular establishment w.e.f 01.04.1973 as a Khalasi by order under Annexure-A/1 dated 06.07.1993. He was granted 1st ACP benefit (financial upgradation from the scale of Rs. 2550-3200/- to the higher scale of Rs. 2650-4000/-) w.e.f 01.10.1999 and that on facing retirement from service (on attaining the age of superannuation) on 31.12.2007, he has been granted pensionary benefits on the basis of his last pay scale i.e., Rs. 2650-4000/-. During his service period and thereafter, the applicant claimed before his authorities to get the benefit of 2nd ACP with effect from 01.10.1999 (for he had completed 24 years of regular services by 01.10.1999) in the pay scale of Rs. 3050-4590/- (till his retirement from service) and pensionary benefits calculated on the basis of the last pay in the said pay scale of Rs. 3050-4590/-. Having received no response from the Authorities/Respondents, the applicant has approached this Tribunal with the present Original Application (filed on 03.05.2010) under Section 19 of the Administrative Tribunals Act, 1985; wherein he has prayed as under:

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"To direct the Respondents to grant 2nd financial upgradation w.e.f. 01.10.1999 to the scale of Rs. 3050-4590/- and grant of consequential benefits i.e. differential arrear salary, DCRG, Comuted value of pension, leave salary and pension with 12% interest.

And pass any other order....."

2. The Respondents have contested the claim of the applicant by filing counter. It is the stand of the Respondents that the applicant was engaged as casual Khalasi Gangman w.e.f. 5.1.1972. He was granted temporary status w.e.f. 1.10.1981 as Gangman in the scale of Rs. 200-250/. Subsequently, he was regularized against 40% PCR post as Khalasi in scale of Rs. 192-232/- w.e.f. 24.04.1988 and again the same was antedated to 1.04.1973. He was granted first financial upgradation from scale of Rs. 2550-3200/- to Rs. 2610-3540/- and second financial upgradation from scale Rs. 2650-4000/- under ACP scheme w.e.f. 1.12.1999. Subsequently, the financial upgradation under ACP scheme was antedated to 1.10.1999.

3. By filing an additional affidavit, the applicant submitted that a similarly placed person namely, Fagu Sahoo, whose service was antedated to 01.04.1973 like that of the applicant had approached this Tribunal in O.A. No. 320/08 with a prayer for grant of second financial upgradation under ACP scheme w.e.f. 1.10.1999 in the scale of Rs. 3050-4590/- and his claim was

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admitted by the Respondents and he has been granted with the scale as second financial upgradation w.e.f. 1.10.1999 vide order dated 17.5.2011. Hence, the contention of the applicant is that he being similarly placed as Fagu Sahoo should have been allowed second financial upgradation in the scale of Rs. 3050-4590/-.

4. During the course of hearing, Mr. P.C.Panda, Ld. Counsel for the Railways submitted that there is a distinction between the case of the applicant and the case of Sri Fagu Sahoo. He tried to explain that in regard to the grant of ACP all norms for promotion have to be followed. According to him, the criteria for promotion in respect of Group-D is seniority-cum-fitness and that fitness includes medical fitness. Whereas Fagu Sahoo's medical category was B-1, the applicant's medical category is C-1. Mr. P.C.Panda, Ld. Railway Advocate produced before us a copy of the, East Coast Railway, Chief Administrative Officer (Con), Personnel Branch, Bhubaneswar letter No. SPO/C/Co-Ordn/BBS/OA-247/2010/Banamali/613 dated 19.12.2011 stating "there is no entry or memo available in the Personal File of Sri Banamali for B-1 Medical category and Medical Category in C-1 entered in the Personal File".

5. We, however, observe that in the same letter under the Remarks column, it has been mentioned as under:

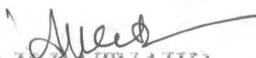
"As per O.O. dt. 5.8.05 of COS/BBS the Sri Banamali was declared fit in B-1 Medical category but

no entry or medical memo is available in P/File.

From this Remark, it is seen that office order dated 05.08.2005 of COS/BBS was published showing Sri Banamali declared fit in B-1 medical category however, no entry or medical memo is available to this effect in the personal file.

6. In view of the above, we are of the considered view that even if no entry or medical memo is available in the personal file, as an office order has been issued on 05.08.2005 declaring Sri Banamali as fit in B-1 medical category there should not have been any dispute/doubt in the mind of the concerned authorities to deny the financial upgradation by declaring him medically unfit. For all intents and purposes, the applicant stands on the same footing as Sri Fagu Sahoo. Accordingly, it will be in the fitness of things that the Respondents should reconsider the case of the applicant for the financial upgradation treating his case at par with that of Fagu Sahoo, who has already received the benefits vide order dated 17.05.2011 cited above and pass a reasoned order within three months hence. Ordered accordingly.

6. In view of the above, the O.A. stands allowed to the extent indicated above.


(A.K.PATNAIK)
MEMBER (JUDL.)


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