

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.214 of 2012

Cuttack this the 18th day of January, 2015

Aintha....Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? yes
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not? yes


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

29
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.214 of 2012

Cuttack this the 18th day of January, 2015

CORAM

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Aintha

Aged about 64 years

S/o-Farika

Retired Track Man

O/O-Deputy C.E./Con./East Coast Railway/Cuttack

Permanent resident of Vill./P.O-Antia

Via-Jenapur

Dist-Jajpur

....Applicant

By the Advocate(s)-M/s.N.R.Routray

S.Mishra

T.K.Choudhury

S.K.Mohanty

-VERSUS-

Union of India represented through

1. The General Manager
East Coast railway
E.Co.R.Sadan
Chandrasekharpur
Bhubaneswar
Dist-Khurda
2. Chief Administrative Officer(Con.),
East Coast Railway,
Rail Vihar,
Chandrasekharpur
Bhubaneswar
Dist-Khurda
3. Senior Personnel Officer, Con./Coordination
East Coast Railway,
Rail Vihar,
Chandrasekharpur
Bhubaneswar
Dist-Khurda

4. Deputy Chief Engineer/Con.,
East Coast Railway,
Station Bazar
P.O-College Square
Town/Dist-Cuttack
5. F.A. & C.A.O./Con.,
East Coast Railway
Rail Vihar,
Chandrasekharpur
Bhubaneswar
Dist-Khurda

....Respondents

By the Advocate(s)-Mr.B.K.Mohapatra (Res.No.1)

ORDER

R.C.MISRA, MEMBER(A):

Applicant is retired employee having retired from Railway Service as Trackman with effect from 30.06.2007 on attaining the age of superannuation. His grievance is directed against the office order dated 12.01.2012(A/9) and the speaking order dated 18.01.2012(A/10) that has been issued by the Respondents in compliance to the orders of this Tribunal in O.A.No.715 of 2011 disposed of on 7.10.2011, whereby his request for grant of 1st and 2nd financial upgradation under the Assured Career Progression (in short ACP) Scheme in the scale of Rs.2650-4000 and 3050-4590/- respectively, with effect from 1.10.1999 has been declined by the Respondent-Railways.

2. The entire gamut of the case as revealed in the O.A. reads thus: Initially, applicant was engaged as Casual Khalasi on daily rate basis in the year 1965 under the Respondent-Railways, granted Temporary Status with effect from 1.1.1981 and was



brought over to regular establishment with effect from 24.4.1988 which was anti-dated to 1.4.1973 vide order dated 6.7.1993(A/1). While working as such, on the recommendations made by the 5th CPC, ACP Scheme came into force with effect from 1.12.1999 in the Railways, which prescribed two financial upgradations on completion of 12 and 24 years regular service, provided that the employee has not earned any promotion. Applicant having completed 24 years regular service as on 1.10.1999, the Screening Committee found him suitable for grant of 1st financial upgradation with effect from 1.10.1999 and upgraded his pay scale from Rs.2610-3540/-; but he was not granted the 2nd ACP with effect from 1.10.1999. This being the situation, applicant submitted a representation followed by reminders to Respondent No.3 with a request for grant of 2nd ACP in the scale of Rs.3050-4590/- and consequently, grant him the financial benefits due to him including the retiral benefits. Since he did not receive any response to his representations, he moved this Tribunal in O.A.No.715 of 2011, which was disposed of on 27.10.2011, with a direction to Respondent No.3 to consider the pending representation and pass a reasoned order within a period of sixty days from the date of receipt of the order. While the matter stood thus, respondent No.3 vide order dated 12.01.2012(A/9) granted the applicant 1st and 2nd ACP with effect from 1.10.1999 in the scale of Rs.2610-3540 and



Rs.2650-4000/- respectively, in supersession of earlier order dated 9.5.2003 and in effect, rejected the representations of the applicant for grant of 1st and 2nd ACP in the scale of Rs.2650-4000 and Rs.3050-4590/- vide A/10 dated 18.01.2012, as a measure of compliance of the directions of this Tribunal in O.A.No.715 of 2011, on the ground that applicant did not qualify in the prescribed medical test, i.e. B-1 category.

2. It is the case of the applicant that the Railway Board issued certain clarification after the issuance of the original ACP Scheme regarding grant of higher grades or grant of financial upgradation according to the cadre promotion. On receipt of the same, Respondent No.2 issued orders for furnishing the service particulars of the staff working under different Departments. According to applicant, had the clarification dated 31.1.2005(A/4) been acted upon by Respondent No.3 by furnishing the service particulars, the grievance of the applicant could have been set at rest.

3. Applicant's next contention is that without he being subjected to medical test, he cannot be declared to have been disqualified in B-1 medical category.

4. The further ground urged by the applicant is that one Fagu Sahoo who was at par with him had been granted the benefit of 1st and 2nd ACP in the scale of Rs.2610-3540/- and Rs.2650-4000 vide orders dated 11.03.2003 and dated 24.12.2002. The said Fagu Sahoo was granted the higher scale



of Rs.2650-4000/- and Rs.3050-4590/- with effect from 1.10.1999 vide order dated 17.5.2011, i.e., five years ^{after} of his ² retirement and therefore, the question of medical test for the purpose of grant of benefit in so far as Fagu Sahoo is concerned is absolutely false and fabricated.

5. In the above backdrop, applicant, in this Original Application has sought for the following relief.

- i) To quash the order under Annexure-A/9 and A/10.
- ii) To direct the respondents to grant 1st and 2nd financial upgradation under ACP Scheme in the scale of rs.2650-4000/- and Rs.3050-4590/- w.e.f. 01.10.1999 and pay the differential arrear salary, DCRG, commuted value of pension, leave salary and arrear pension with 12% interest.

6. Resisting the claims of the applicant, Respondent-Railways have filed their counter. According to them, applicant was engaged in the Railways as Casual Khalasi on daily rate basis with effect from 5.1.1972, granted Temporary Status with effect from 1.1.1981 and was absorbed against PCR Khalasi in the scale of Rs.750-940/- with effect from 20.4.1988(direct entry grade on substantive status) which was subsequently ^{e b} anti-dated to 1.4.1973. As his medical category is C-1, as per Estt.Srl.No.288/99 dated 1.12.1999, applicant was granted 1st financial upgradation under the ACP Scheme in the scale of Rs.2650-4000 on hierarchy scale of the C.P.C. with effect from 1.12.1999. Subsequently, grant of this benefit was anti-dated to ^{e b}

34

1.10.1999, i.e., the date when ACP Scheme came into effect in the Railways. According to Railways, applicant was not granted the scale of Rs.2650-4000/- from the scale of Rs.2550-3200 due to C-1 medical category. In other words, it is the case of the respondents that for the purpose of grant of scale of Rs.2650-4000/- from Rs.2550-3200/-, B-1 medical category is mandatory as per the terms and conditions laid down in Estt. Srl.No.268/99, which prescribes that while granting the benefit under the ACP Scheme, normal promotion norms prescribed, such as bench mark, trade test, departmental examination, seniority cum fitness (in case of Gr.D employees) etc. shall be ensured. It is further stipulated in Para-7 of the Scheme that the financial upgradation under the ACP Scheme shall be given to the next higher grade in accordance with the existing hierarchy/cadre of posts without creating new posts for this purpose.

7. As regards the benefits granted to similarly situated person viz., one Fagu Sahoo, it is the case of the respondents that the said Fagu Sahoo was declared fit in B-1 medical category and was granted 1st and 2nd financial upgradations under the ACP Scheme in the scale of Rs.2650-4000 and Rs.3050-4590/- respectively, with effect from 1.10.1999. Therefore, according to Respondent-Railways, applicant is not similarly situated person as that of Fagu Sahoo.



With the above submissions, Respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

8. In the rejoinder to counter, applicant has stated that his claim is based on clarifications dated 28.12.2004(A/11) and dated 31.1.2005(A/5). Applicant has pointed out that except at the time of regularization of his service in the year, 1988, he has never been sent for any further medical examination and therefore, the statement made by the Respondent-Railways that he did not qualify in B-1 medical category to be eligible for grant of financial upgradation in the scale of rs.2650-4000 and Rs.3050-4590/- respectively with effect from 1.10.1999 is without any basis.

9. In this respect, applicant has brought to our notice the order dated 11.08.2014 of this Tribunal wherein the learned counsel for the respondents was directed to obtain the following instructions.

- (i) Under which provision of Rules or instruction an employee has to pass the medical standard for the purpose of conferment of the benefit of financial upgradation under the ACP and if such a provision exists, it should specifically be clarified as to whether the medical certificate produced by the employee at the time of regularization/appointment should be taken into consideration or fresh medical test is to be done.
- (ii) Also to clarify whether fulfillment of normal promotion norms 'seniority cum fitness' as provided in clause 6(a) of the ACP Scheme does it mean one has to pass the medical standard ?



- (iii) Whether medical test was conducted afresh for the applicant for conferment of financial upgradation. If so produce copy of the same".

10. In the written notes of submission applicant has submitted that the queries made by this Tribunal as above having not been answered by the Respondent-Railways, it is evident that no further medical examination is required for the purpose of grant of benefit under the ACP Scheme and therefore, the submission of the Respondents that the applicant did not qualify the prescribed medical test in B-1 category is purportedly to deny the benefit under the ACP ^{to} which he is entitled to.

11. On the other hand, Respondent-Railways in their written notes of submission have indicated that medical fitness of an employee is certified at the time of his regularization/absorption into the Railway services and the same has been followed in case of the applicant for grant of ACP and therefore, there was no reason to subject the applicant ^{to} for fresh medical test for the purpose of grant of ACP by the reason that there are no guidelines of the Railway Board in this regard. Applicant having not qualified in the prescribed medical category, i.e. B-1 at par with Fagu Sahoo, he is not entitled to any relief. Finally, it has been submitted that applicant's present medical classification being C-1 category, the same has not been accepted for grant of benefit under the ACP as per the Recruitment Rules.

12. In the impugned order dated 18.01.2012, the following ground is stated to be reasons for rejection of the prayer of the applicant.

“Accordingly, as stated in Estt. Sr. No. 288/99 that seniority-cum-fitness is to be adjudged while granting ACP benefits and since you have not qualified in the prescribed medical test, i.e. B-1 category you are not eligible to get scale Rs. 2650-4000/- as 1st ACP and Rs. 3050-4590/- as 2nd ACP like Fagu Sahu who has been declared fit in B-1 medical category and has been granted revised 1st ACP in the scale of Rs. 2650-4000/- and 2nd ACP in Scale of Rs. 3050-4590/- w.e.f. 1.10.1999 in obedience to Hon’ble CAT/CTC’s order dt. 24.03.2011 in O.A. No. 320/2008.

This disposes of Hon’ble CAT/CTC’s order dt. 27.10.2011 in O.A. No. 715/2011.”

13. The essence of the above order is that applicant did not qualify in the prescribed medical test, i.e. B1 category. The submission of the applicant in his rejoinder is that he was never asked to go through a medical test in the year 2003, i.e. at the time of consideration of ACP. The only time he appeared in a medical test was in the year 1988, when his services were



regularized in the railways. The Ld. Counsel for the Railways had initially made a tentative remark that fresh medical test was conducted, but subsequently on being correctly advised made a categorical submission that no medical test was conducted at the time of consideration of ACP. The Ld. Counsel for the respondents in his written notes of submission has urged that the medical classification acquired by the applicant at the time of appointment has been taken into consideration.

The defect in this submission that strikes our mind is that if it is so, then why was it not stated straightaway in the ground of rejection. On the other hand, the impugned order states that applicant did not qualify in the prescribed medical test, which turns out to be factually incorrect, as admitted by respondents.

14. At this stage, we need to go over the conditions to be satisfied for award of ACP, as contained in Estt. Sr. No. 288/99 dt. 1.12.1999, of the South Eastern Railway. ^Ppara 6 of



39

+ 2

the "Conditions for grant of benefits under the ACP Scheme" is quoted below.

6. The following shall be ensured while granting benefits under the ACP Scheme.

a) Fulfillment of normal promotion norms prescribed, such as bench-mark, trade-test, departmental examination, seniority-cum-fitness (in case of Group D employees), etc for grant of financial upgradations.

15. It is the well -known position that ACP benefit is personal to the employee. Grant of ACP cannot be construed as regular or functional promotion, and there is absolutely no scope for creation of post as an adjunct to award of ACP on an employee. But the instructions have clarified that the norms and conditions of promotion will be attracted when an employee's case is considered for ACP. Performance will be the yardstick for adjudging the eligibility of an employee for ACP. The provision quoted above lays down a few criteria as bench mark, trade-test, departmental examination and seniority-cum-fitness (in case of group D employees). 'Fitness' is the general ability of a person to perform the task assigned to him. Fitness



is the most important criterion of an individual employee who is assigned to the performance of a job. Although it is not stated in so many words, physical fitness is a very important aspect of general fitness. The respondents' submission is that based upon the medical category at the time of appointment, the fitness has been determined. First of all, this is not categorically mentioned in the impugned orders^p but subsequently clarified. The order mentioned that applicant has not qualified in the prescribed medical test, giving out a false impression that a medical test was actually conducted. Secondly, if the prescribed eligibility is at the time of consideration of the employee for ACP, is it fair that the medical category at appointment will hold sway? Strictly, according to instructions, is not 'seniority-cum-fitness' to be determined at the time of consideration? It is the well-stated position that the criteria of promotion would be applied in the case of ACP. Therefore, conditions of promotion have to be separately considered, and conditions at the time of appointment cannot be merely extrapolated at the time of



41

consideration of promotion/ACP. To give one example, qualification in trade test is a criterion. Is not trade test conducted afresh at the time of promotion/award of ACP? It is quite obvious that bench-mark, trade test and departmental examination are all applied afresh at the time of consideration. Then why not fitness? There is nothing in the conditions for award of ACP that prescribes that medical category at the time of appointment will be the final determinant of 'fitness' of the employee. It is only a decision of concerned authorities that it should be so. However, the fact of the matter is that there is nothing sacrosanct about medical category at appointment, while considering promotion/ACP. In fact, the conditions prescribed lay down that the employer has to be satisfied about 'fitness' of the employee for getting ACP benefit. This 'fitness' in its narrower connotation would obviously mean 'physical fitness' but in its broader sense may mean much more. To give an illustration, is mental fitness not an important part of fitness? All that it would mean is, that 'fitness' has to be



certified on 'a real time' basis, that is at the exact point of consideration of conferring the benefit. That will be the fair way of such assessment, and if we read the conditions carefully, that will be in keeping with the spirit of the instructions.

16. The sole ground of rejection of the prayer of the applicant is that he did not qualify in the prescribed medical test in B-1 category. Since the admitted position^{is} that such medical test was not conducted, the ground of rejection appears to be arbitrary. There is no doubt that the respondents are relying upon the ground that in case of Fagu Sahu, the medical category at the time of appointment was B1 and in the case of applicant it was C1 and that applicant cannot, therefore, claim parity with the said Fagu Sahu. While we consider this submission to be fair, we still do have our reservations as to whether this submission is to be accepted in the face of clear conditions of eligibility for grant of ACP under the relevant instructions. In fact, such submission fails the test of judicial scrutiny. When it is admitted by respondents that medical test



at the point of consideration was not actually conducted, how can they submit that applicant "has not qualified in the prescribed medical test"? That being the only ground on the basis of which the prayer of the applicant was rejected, we do not find the impugned orders dt. 12.1.2012 and 18.1.2012 to be legally sustainable.

17. Ideally, the applicant should have been asked to go through a medical test for the determination of his fitness in order to consider his eligibility for ACP benefit. The applicant has however retired on 30th June 2007, and it is too late in the day for him to go through a medical test. However, based upon the grounds we have discussed in the foregoing paragraphs, we quash the order dt. 12.1.2012 and 18.1.2012, and remit the matter back to the respondents for reconsideration of the claim based upon other conditions as applicable to ACP, and if in the course of reconsideration, he is found to be eligible, to confer on the applicant the resultant benefits within a period of 120



44

(one hundred twenty) days from the date of receipt of the order.

In the result, the O.A. is thus allowed, leaving the parties with no order as to costs.

(R.C.MISRA)
MEMBER(A)

R.C. Misra

A.K. Patnaik
(A.K.PATNAIK)
MEMBER (J)

BKS