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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.224 of 2012
Cuttack, this the 2nd day of October, 2014

Jogi Pradhan Applicant

-Versus-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *Yes*

2. Whether it be referred to PB for circulation? *Yes*


(R.C. MISRA)
MEMBER(A)


(A.K. PATNAIK)
MEMBER(J)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No.224 of 2012
Cuttack, this the 21st day of October, 2014

CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R. C. MISRA, MEMBER (A)

Sri Jogi Pradhan,
aged about 64 years,
S/O. Sumant Pradhan,
Retired Track Man,
Office of Deputy C.S.T.E./Con./
East Coast Railway/Rail Vihar/
Chandrasekharpur/
Bhubaneswar, Permanent resident of
Vill:Srichandanpur, P.O.: Antia, Via:Jenapur,
Dist:Jajpur, Odisha.

...Applicant
(Advocates: M/s-N.R. Routray, S. Mishra, T.K. Choudhury, S.K.Mohanty

VERSUS

Union of India Represented through

1. 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 Signal & Telecom Engineer/Con.,
East Coast Railway,
Station Bazar, PO-College Square,
Town/Dist.-Cuttack.
5. Financial Advisor and Chief Accounts Officer(Con),
East Coast Railway,Rail Vihar, Chandrasekharpur,
Bhubaneswar, Dist-Khurda.

... Respondents

(Advocate: R.S. Behera)

Akbar

ORDER

A.K. PATNAIK, MEMBER (J):

Applicant is a retired Track Man under the Respondent-Railways. He had earlier moved this Tribunal in O.A. No.720 of 2011 for direction to be issued to Respondents to grant 2nd financial upgradation w.e.f. 01.10.1999 in the scale of Rs.3050-4590/- under the ACP Scheme by extending the benefit of order dated 17.05.2011 and accordingly, to pay the consequential benefits accrued thereon. This Tribunal vide order dated 25.10.2011 disposed of the said O.A. with direction to Respondents to consider and dispose of the representation and pass a reasoned and speaking order. The Respondents in compliance with the above direction of the Tribunal rejected the claim of the applicant vide speaking order dated 18.01.2012 (Annexure-A/10) which is impugned and the subject matter of challenge herein.

2. It is the case of the applicant that he was initially appointed as casual Khalasi under the Respondents/Railways on daily rated basis in the year 1972 and was granted temporary status w.e.f. 01.01.1981. While working as such, he was absorbed against PCR Khalasi in the scale of Rs.750/-940/- w.e.f. 24.04.1988 which, however, was antedated to 01.04.1973. Therefore, the approved service or for that matter the regular service for the purpose of grant of ACP in so far as the applicant is concerned accrues w.e.f. 01.04.1973. It is the case of the applicant that by virtue of order dated 28.12.2004(Annexure-A/11) clarification in the matter of implementation of ACP Scheme to group 'D' staff working in the Construction Organisation issued by the Chief Personnel Officer

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which clarified that the designation of "Khalasi" has been replaced by "Artisan Helper" in Technical/Maintenance Department. The cadre structure for the Artisan Helper is as follows:-

Category	Designation	Scale Rs.
Artisan Helper	Artisan Helper-I	2650-4000
	Artisan Helper-II	2550-3200

3. It is further stated therein that there is no scale of Rs.2610-3540 in this category in Technical/Maintenance departments. The normal avenue of promotion for Artisan Helper-I from scale Rs.2650-4000 is Technician Gr.III in scale Rs.3050-4590. In the above background, it has been directed that the ACP benefits is to be granted with reference to substantive status in terms of post and scale of the employee in his lien seniority unit/category on the date he completes the required length of service, without minimum one/two promotion/s in the entire service. His adhoc status/post/scale has no relevance while granting ACP benefit.

4. The applicant has submitted that similarly placed person one Fagu Sahoo whose service was antedated like that of the applicant to 01.04.1973 had earlier approached this Tribunal in O.A. No.320/2008 with a prayer for grant of 2nd financial upgradation under ACP Scheme with effect from 01.10.1999 in the scale of Rs.3050-4590/- It may be mentioned that in the counter filed to O.A. No.320/2008, Respondents therein had taken a stand that the said Fagu Sahoo had been granted 1st and 2nd financial upgradation under ACP Scheme in the scale of pay of Rs.2610-3540/- and Rs.2650-4000/- with effect from 01.12.1999 as per the Railways letter dated 11.03.2003.

Ans

5. Referring to the above, the applicant has made out a case that in line with Sri Fagu Sahoo, he had also been granted the 1st and 2nd financial upgradation under ACP Scheme in the scale of pay of Rs.2610-3540/- and Rs.2650-4000/- vide Railways letter dated 11.03.2003. Therefore, he being similarly circumstanced should not have been discriminated against. It is the case of the applicant that he has been granted temporary status as a Gangman w.e.f. 01.01.1981 in the scale of pay of Rs.200-250/- during the 3rd CPC which was revised to Rs.750-1025/- by the 4th CPC and subsequently, revised to Rs.2610-3540 by the 5th CPC. It has been further submitted that as on 24.12.2002 he was in the scale of Rs.2610-3540/- and was not granted any promotion during his service career. However, his name having been recommended for grant of two financial upgradation under the ACP scheme, the Screening Committee recommended 1st and 2nd financial upgradation under ACP Scheme in the scale of Rs.2610-3540/- and Rs.2650-4000/- instead of Rs.2650-4000/- and Rs.2750-4400/-, Rs.3050-4500/- as in the case of Fagu Sahoo. With the above submissions applicant has sought for the following relief (s):-

“I) To quash the order under Annexure-A/9 & A/10.

II) And to direct the respondents to grant 1st and 2nd financial up-gradation under ACP Scheme in 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. The main thrust of the counter by which the Respondents have resisted the claim of the applicant is that whereas Railway Board's letter dated 01.10.1999, stipulates that while granting ACP benefits 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, Para 7 of the condition stipulates that the financial upgradation under the scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new post for this purpose.

7. Further, the Railway Board vide their letter dated 19.02.2002 clarified that the only those employees who fulfill all promotional norms are eligible to be considered for benefit under the ACP scheme. Therefore, various stipulations and conditions specified in the recruitment rules for promotion to the next higher grade including the higher/additional educational qualification if prescribed, would need to be met even for conditions under ACP Scheme. In the above background it is the case of the Respondents that applicant was granted financial up-gradation in the scale of Rs.2610-3540/- and Rs.2650-4000/- (hierarchy pay of 5th Pay Commission) w.e.f. 01.10.1999 on completion of 24 years of regular service as he was qualified in C-1 Medical category (as recorded in service records) as per terms and conditions laid down in Estt. Srl. No.288/99; which prescribes that ACP benefit is to be granted with reference to substantive status in terms of posts and scales of the employee in his/her seniority Unit by category on the date he completes the required length of service without minimum one/two promoters in the entire service.

8. As regards claim of the applicant in drawing parity with Sri Fagu Sahoo, Respondents have submitted that the said Fagu Sahoo had been declared fit in B-1 medical category and thus has been granted the 1st



ACP in the scale of Rs.2650-4000 and 2nd ACP in the scale of Rs.3050-4590/- w.e.f. 01.10.1999, as per the direction of this Tribunal in O.A. No.320/2008.

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

10. Applicant has filed rejoinder to the counter stating therein that he having not been sent for medical test, the question of his fitness either in C-1 or B-1 category does not arise. He has submitted that his claim for grant of 1st and 2nd financial upgradation is based on the clarification dated 28.12.2004 under Annexure-A/11 and, therefore, it is the case of the applicant that the Respondents without complying with the above clarification dated 28.12.2004 (Annexure-A/11) ought not to have made a submission out of their own.

11. We have heard the Ld. Counsel for both the sides and perused the materials placed on record. We would, at the outset, make it clear that grant of benefits under the ACP Scheme is purely personal and based on fulfilling the service career of an employee. Therefore, hardly there is any condition in the scheme for granting the benefit of ACP by drawing a logic of parity or similarly placed with other employee. Viewed from this, we are not inclined to grant any relief to the applicant based on the submissions that his status is at par with Fagu Saoo.

12. Secondly, the case of the applicant for grant of benefits under the ACP has to be considered within the provisions of ACP Scheme vis-a-vis his service records only. It is the case of the Respondents that the applicant having not fulfilled the promotional norms, i.e. not fit in medical

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B-1 category, could not be granted the higher pay of promotional post. To this the applicant has submitted that he has not been sent for medical test. This is neither the grievance of the applicant nor the point of determination in this O.A. Therefore, we do not like to consider the matter as to why the applicant had not been sent for medical test.

13. As regards the claim of the applicant on Annexure-A/11 dated 28.12.2004 we would like to note that although the applicant's designation as Khalasi should have been replaced by Artisan Helper with the provision of benefit intended to be provided therein, it is not known as to why the benefit of Annexure-A/11 was not extended to the applicant. Be that as it may, this being not the point of determination, we do not like to go deeply into the matter.

14. As regards the claim of the applicant that he was temporary status Gangman in the scale of Rs.200-250 w.e.f. 01.01.1981, subsequently revised to of Rs.750-1025/- and further revised to Rs.2610-3540/- by 5th CPC, it has been submitted by the Respondents that the benefit of ACP is granted with reference to the substantive status in terms of posts and class of employee. According to Respondents, the post of Gangman held by the applicant on officiating/adhoc basis is not counted for the purpose of ACP as his substantive post was Khalasi (PCR).

15. Viewed from this angle, the plea raised by the applicant in this regard does not hold any water.

16. Having considered all aspects of the matter and as already indicated above, we would like to note that applicant has not laid foundation of his claim for grant of benefits under the ACP Scheme by

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alleging infringement of any of the provisions of the Scheme by the Respondents while considering the matter. Grant of benefit under the ACP Scheme being purely personal, which is with reference to service records and other conditions of the Scheme, and the applicant having failed to establish his claim in this regard, we are of the view that the applicant has not been able to make out the case for any of the relief sought. In the result the O.A. being devoid of merit is dismissed. No costs.



(R.C.MISRA)
MEMBER(A)



(A.K.PATNAIK)
MEMBER(J)