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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.242 of 2012

Cuttack this the 12th day of *Jeem*, 2017

Podat...Applicant

-VERSUS-

Union of India & Ors...Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *NB*
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? *No*


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.242 of 2012

Cuttack this the 12th day of Jan., 2017

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

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

Pada,
Aged about 65 years
S/o. late Baistamba
Retired Key Man
O/o. Senior Engineer(Works)/Construction/
East Coast Railway
Rail Vihar
Chandrasekharapur
Bhubaneswar
Dist-Khurda
Permanent resident of Vill-Kundal, PO-Rahandiahat
Dist-Bhadrak

...Applicant

By the Advocate(s)-M/s.N.R.Routray
S.Mishra
T.K.Chaudhury
S.K.Mohanty

-VERSUS-

Union of India represented through:

1. The General Manager
East Coast Railways
Rail Vihar
Chandrasekharapur
Bhubaneswar
Dist-Khurda
2. Senior Personnel Officer, Con./Co-Ord.,
East Coast Railway
Rail Vihar
Chandrasekharapur
Bhubaneswar
Dist-Khurda

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3. Senior DEN/Co-ordination
East Coast Railway
Khurda Road Division
At/PO-Jatni
Dist-Khurda
4. Senior Section Engineer(Works/Construction
East Coast Railway
Rail Vihar
Chandrasekhapur
Bhubaneswar
Dist-Khurda
5. Chief Administrative Officer(Con.)
East Coast Railway,
Rail Vihar
Chandrasekhapur
Bhubaneswar
Dist-Khurda

...Respondents

By the Advocate(s)-Mr.M.K.Das

ORDER**R.C.MISRA, MEMBER(A):**

Applicant is a retired railway employee. In this Original Application, he has approached this Tribunal for direction to be issued to respondents to grant him 1st and 2nd financial up-gradation under ACP Scheme in scale of Rs.2650-4000/- and Rs.3050-4590/- respectively, w.e.f. 01.10.1999 and pay the differential arrear salary from 1.10.1999 to 30.11.2005, , DCRG, commuted value of pension, leave salary and arrear pension along with 12% interest.

2. Shorn of unnecessary details, it would suffice to note that initially applicant had been engaged in the railway as casual Khalasi on daily rate basis on 28.6.1979 and promoted as casual



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Keyman in the year 24.7.1980. Subsequently, he was granted temporary status with effect from 1.1.1983 and while working as such, he was absorbed against PCR post as Khalasi in the scale of Rs.750-940/-with effect from 24.4.1988. This regularization was later on antedated to 1.4.1973. However, applicant though was regularized in Gr.D PCR post carrying the scale of Rs.750-940, yet, he was allowed to continue as Keyman in the scale of Rs.800-1150/-/Rs.2650-4000/- on officiating basis due to exigency of work. Thereafter, Applicant was regularized as Key man in the scale of Rs.2610-3540/- against 60% PCR post with effect from 1.4.1988.

3. The Assured Career Progression Scheme (in short ACP) was introduced in the Railways vide RBE No.233/99 dated 1.10.1999, and the Scheme was made effective from the same date. According to the Scheme, the first financial upgradation would be allowed to the employee after completion of 12 years of regular service, and the second upgradation after 24 years, if the employee has not been granted any promotion in the meantime. The specific grievance ventilated by the applicant in this O.A. is that on the date of retirement, i.e., 31.8.2007, he had completed more than 34 years of regular service. However, he was granted only one promotion/financial upgradation, and was thus deprived of the full benefits of the ACP Scheme. He had completed 24 years of regular service as on 1.10.1999, the date on which the ACP Scheme was made effective. He,

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therefore, submitted a representation dated 28.6.2011 praying for 1st financial upgradation in the scale of Rs.2650-4000/- and 2nd financial upgradation in the scale of Rs.3050 - Rs.4590. The applicant also claims that one Fagu Sahu, similarly placed employee was granted this relief in O.A.No.320 of 2008, by this Tribunal, and he should be extended the same relief.

4. On the other hand, it is the case of the respondents that applicant was regularized against 60% PCR post on higher grade as Key Man on 1.4.1988 in the scale of Rs.2610-3540/- and his medical category being C/1 as recorded in his Service Records, he was only eligible for 2nd financial upgradation under the ACP Scheme in the scale of Rs.2650-4000/- on hierarchy scale of 5th CPC with effect from 1.10.1999 on completion of 24 years regular service. Applicant was not entitled to scale of Rs.2650-3200 and Rs.3050-4590 from scale of Rs.2550-3300 due to C-1 medical category as per channel of promotional avenue as circulated vide letter dated 28.12.2004. It is stated that for grant of financial upgradation in the scale of Rs.2650-4000/- from the scale of Rs.2550-3200 to Khalasi, B-1 medical category is mandatory as per the terms and conditions laid down vide Esttl.Sri.No.288/99.

5. We upon perusal of the pleadings of the parties have heard the learned counsel for both the sides in great detail. We have also gone through the service records of the applicant.



6. The ground based on which applicant's prayer been contested by the respondent-railways is that as per Est.Srl.No.288/99 while granting ACP benefits, normal promotion norms prescribed should be fulfilled by the employee concerned. In the above background, applicant having been declared medically fit in C-1 category against the required eligibility condition of medical category B-1 was not considered eligible for benefit under the ACP Scheme. It is stated that applicant has been granted 1st ACP in the scale of Rs.2610-3540 and 2nd ACP in the scale of Rs.2650-4000/- with effect from 1.10.1999 as per hierarchical scale based on the recommendations of 5th CPC.

7. At the outset, we would like to note that grant of financial benefits under the ACP Scheme being purely personal wholly depends upon the service records of the employee concerned.

8. In the recent past, this Tribunal in O.A.No.1071 of 2012 - disposed of on 28.3.2016 had dealt with the facts and circumstances which are quite similar to the facts of the instant O.A. In Paragraph-24 of the order in O.A.No.1071 of 2012, this Tribunal held as under.

"At this juncture, we would at the cost of repetition like to say that nothing is forthcoming from the pleadings of the parties as to whether or not 1st and 2nd financial upgradations already been granted to the applicant with effect from 1.10.1999 in the scale of Rs.2610-3540 and Rs.2650-4000/-, respectively, are in the next higher grade in accordance with the existing hierarchy in a cadre/category of posts, which is the rallying point to clinch the issue. In view of

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this, it is considered expedient to remit the matter back to the railway-authorities for reconsideration of the matter in conformity with the following directions".

9. Since the point to be decided in this O.A. has been considered and decided already in O.A.No.1071 of 2012 with certain directions to respondent-railways, we do not feel inclined to make a departure from the view already taken and therefore, we issue the same directions as made in that O.A. for the respondents to carryout, as under.

- i) Whether 1st and 2nd financial upgradations that has been granted to the applicant in the scale of Rs.2610-3540 and Rs.2650-4000/-, respectively, with effect from 1.10.1999 are in the next higher grade in accordance with the existing hierarchy in a cadre/category of posts.
 - ii) If the reconsideration on the above point turns out affirmatively, there is no need to further grant 1st and 2nd ACP in the scale of Rs. 2650-4000 and 3050-4590/- with effect from 1.10.1999, as claimed by the applicant in this O.A.
 - iii) If the outcome of reconsideration is in the negative, then the respondents shall consider grant of 1st and 2nd ACP in the scale of Rs. 2650-4000 and 3050-4590/- with effect from 1.10.1999 in favour of the applicant based upon other conditions than medical standard, as applicable to ACP Scheme and in such eventuality, if he is found suitable for the same, he be granted the consequential financial benefits.
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10. Respondents are directed to carry into effect the above direction and communicate the decision thereon to the applicant within a period of 120 days from the date of receipt of this order.

11. With the observations and directions, the O.A. is thus disposed of. No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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