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CENTRAL ADMINISRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.462 of 2012

Cuttack this the 8th day of February, 2016

P u r i a ...Applicant

VS.

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? No

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)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATIONS NO. 462 OF 2012
Cuttack this the 8th day of February, 2016

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

Puria aged about 65 years S/o Late Netra, retired Trackman, Engineering Construction, Khurda, permanent resident of Village Ramachandrapur, PO Saragadamakundapur, PS – Dharmasala, District Jajpur, Odihsa.

...Applicant

By the Advocate- Mr.N.R.Routray
S.Mishra
T.K.Choudhury
S.K.Mohanty

-VERSUS-

1- Union of India represented through 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./Co-Ord., East Coast Railway, Rail Vihar,Chandrasekharpur,Bhubaneswar,Dist.Khurda.
4- F.A.& CAO/Con., East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar,Dist.Khurda.

...Respondents

By the Advocate(s)-Mr.S.Barik

ORDER

PER R.C.MISRA,,MEMBER(A)

The applicant of this OA was initially appointed as a Casual Khalasi in 1965 and was regularized w.e.f. 01.04.1973 as Gangman vide order dated 06.07.1993. Due to Due to lack of promotional avenues, ACP Scheme for Central Government Civilian employees was introduced during the V CPC . The applicant retired from Railway Service on 30.06.2006 after rendering 32 years of regular service. It is pleaded in the application that as per the order dated 31.01.2005 (Annex.A/4) issued by the Chief

Administrative Officer (Construction), upgradation was to be granted to the beneficiaries as per their cadre promotion. Since the applicant had completed 24 years of qualifying service as on 01.10.1999, the screening committee found him suitable for 1st ACP w.e.f. 01.10.1999 and accordingly, his pay was fixed from Rs.2610-3540 to 2650-4000. Applicant during his entire service carrier posted as a Gangman/Trackman and was granted 1st financial upgradation vide order dated 11.03.2003. Applicant vide representation Annex/A/5 dated 30.08.2010 prayed for grant of 2nd ACP w.e.f. 01.10.1999 in the scale of Rs. 3050-4590 and accordingly recalculate his retiral benefits including the pension and release the arrears accordingly. But, even to his reminders sent on 28.02.2011 and 05.04.2011, no heed was paid and being aggrieved with the inaction, the applicant has approached this Tribunal praying for quashment of orders at Annex.A/9 and A/10 and, to direct the respondents to grant both the financial upgradations along with interest.

2. Respondent-Railways have filed their counter opposing the prayer of the applicant. The main thrust of the counter reply is that as per provisions of the ACP Scheme, for grant of financial upgradations, an incumbent has to fulfill the norms and conditions of promotion. Since the applicant did not fulfill the same, he was not granted the said benefit. For the sake of clarity, the relevant part of the order dated 18.01.2012(A/10) by virtue of which applicant's request for grant of benefit under the ACP Scheme has been rejected, reads as under:

> ***"Railway Board's letter No.PC-V-99/1/1/1 dated 01.10.1999, Annexure-I, conditions circulated vide CPO/SER/GRC. Est. Srl. No. 288/99 Item No. 6(a) envisages 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. for grant of financial up-gradation shall be ensured and 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.***

Further, Railway Board vide their letter No. PC-V/99/1/1/1, dt. 19.2.2002 circulated vide CPO/ECoR/BBS's Est. Srl. No. 39/02 has clarified on ACP scheme. The said letter interalia speaks that Item No. 46 to the condition No. 6(a) of Annexure-I to the Board's letter dt. 01.10.99 clarified that only those employees who fulfill all promotional norms are eligible to be considered for benefit under 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.

Accordingly, as stated in Est. Srl. No. 288/99 that seniority-cum-fitness is to be adjudged while granting ACP benefits & 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 Sri Fagu Sahoo who has been declared fit in B-1 medical category and has been granted revised 1st ACP in scale Rs. 2650-4000/- and 2nd ACP in scale Rs. 3050-4590/- w.e.f. 01.10.99 in obedience to Hon'ble CAT/CTC's order dt. 24.3.2011 in O.A. No. 320/2008.

This disposes of Hon'ble CAT/CTC's Order dated 27.10.2011 in OA No. 717/2011."

3. We have heard the learned counsel for both the sides and perused the records. Recently, this Tribunal vide order dated 18.01.2016 in O.A. No. 214/2012 decided a matter where the benefit of ACP had not been granted to the applicant therein on the ground that he did not qualify in the prescribed medical test, i.e., B-1 category. This Tribunal having taken note of Estt. Sr.No.288/99 dated 1.12.1999 and Para-6 of the "Conditions for grant of benefit under the ACP Scheme", held as under.

> **"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 para 6 of the "Conditions for grand of benefits under the ACP Scheme" is quoted below.**
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> **6. The following shall be ensured while granting benefits under the ACP Scheme.**
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> **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.**
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> **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 order 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 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.

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.

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 (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".

4. Since the issue has already been decided by this Tribunal as mentioned above, we do not feel inclined to make a departure from the view already taken under similar circumstances. Accordingly, the impugned orders dated 12.01.2012 (Annex.A/9) and 18.01.2012 (Annex.A/10) are quashed and set aside and the matter is remitted back to the respondents for reconsideration of the claim based upon other conditions as applicable to ACP, and if in the course of reconsideration, applicant is found to be eligible, he be conferred with the benefits within a period of 120 (one hundred twenty) days from the date of receipt of the order.

5. In the result, the O.A. is thus allowed, leaving the parties to bear their own costs.

(R.C.MISRA)
MEMBER(A)

(A.K.PATNAIK)
MEMBER (J)

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