

45

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.468 OF 2012
Cuttack this the 22nd day of JUNE, 2017

Kelu Roput. ...Applicant

-VERSUS-

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.PATNIK)
MEMBER(J)

46

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

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

Kelu Rout, aged about 65 years, Sp. Of late Indra, Retired Rriver Grade-II, O/o. PA & C.A.O./Con./East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, permanent resident of Vill-Gengutia, PO-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, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Chief Administrative Officer/Construction/East Coast Railway/Rail Vihar/Chandrasekharpur, Bhubaneswar, Dist-Khurda
3. Senior Personnel Officer, Construction/Coordination, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda
4. Financial Advisor & Chief Accounts Officer/con./East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda

...Respondents

By the Advocate(s)-Mr.T.Rath



47

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

Applicant is a retired railway employee. In this Original Application under Section 19 of the A.T.Act, 1985, he has prayed for the following relief.

- i) To quash the order of rejection dated 19.01.2012 under Annexure-A/7.
- ii) And to direct the Respondents to grant 2nd financial upgradation under the ACP Scheme w.e.f. 1.10.1999 to the scale of Rs.4500-7000/-.
- iii) And to direct the Respondents to issue revised PPO and release the differential arrear salary, pension, DCRG, commuted value of pension and leave salary with 12% interest for the delayed period of payment.

2. This is the 2nd round of litigation before this Tribunal by the applicant. Earlier, he had approached this Tribunal in O.A.No.687 of 2011 and this Tribunal vide order dated 18.10.2011 disposed of the said O.A. with direction to respondents to consider and dispose of the representation and pass a reasoned and speaking order under intimation to the applicant. In the above background, the respondents having considered the representation of the applicant, rejected his claim for grant of 2nd financial upgradation under the ACP Scheme with effect from 01.10.1999. Hence, this Original Application.

3. It is the case of the applicant that initially he was appointed on 12.09.1969 and became PCR staff with effect from 01.04.1973. Thereafter vide Office Memorandum dated



48

7.2.2000 his service was regularized as Driver Gr.III with effect from 30.05.1985. He was promoted to the post of Driver Grade II on ad hoc measure in the year 1996. Firth Central Pay Commission introduced Assured Career Progression (ACP) Scheme to the Central Government civil employees. Paragraph-5.1 (*conditions for grant of benefits under the ACP Scheme*), stipulates that two financial upgradations are applicable to the Railway employees, which shall be counted against regular promotions availed from the grade in which an employee was appointed as a direct recruit. In other words, it has been pointed out that two financial upgradations under the ACP Scheme shall be available, only if, no regular promotions during the prescribed periods (12 and 24) years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him.

4. Applicant has pleaded that he was retrospectively regularized as Vehicle Driver Grade-III with effect from 30.05.1985 vide order dated 7.2.2000, even though at that point of time, he was holding the post of Driver Grade-I. By taking 100% regular service with effect from 01.04.1973, he is deemed to have completed more than 24 years qualifying



49

service for grant of 1st and 2nd financial upgradation under the ACP Scheme with effect from 1.10.1999. Further, he has contended that had the railway authorities promoted him to the post of Driver, Gr.II on ad hoc basis, then he could have been granted 1st and 2nd financial upgradation under the ACP Scheme with effect from 1.10.1999 in the scale of Rs.4000-60000 and Rs.45000-8000/-, respectively. His grievance is that he having completed 26 years qualifying service is entitled to 2nd financial upgradation under the ACP Scheme with effect from 1.10.1999 in the scale of Rs.4500-7000/- meant for the post of Driver, Grade-I which he was holding at that point of time. The applicant in the meantime, has retired from service with effect from ~~21.12.1008~~ ^{31.12.2007} on attaining the age of superannuation.

5. On the other hand, the railway administration, by filing a detailed counter have opposed the prayer of the applicant. According to respondent-railways, applicant had initially been engaged as Casual Truck Helper on daily rated basis with effect from 03.05.1972 and while working as such, he was granted temporary status with effect from 01.01.1981 in the scale of Rs.196-232/Rs.750-940/- vide DEN/C/CTC's Memorandum No.CRW/MCS/E/4/779 dated 02.05.1988 and while working as such, he was absorbed against PCR Khalasi post with effect from 24.4.1988 vide Memorandum dated 2.5.1988, which was antedated to 01.04.1973 vide office order dated 10.9.1993.

50

Applicant was promoted as V/Driver, Gr.III in the scale of Rs.950-1500/- with effect from 30.5.1985 vide Memorandum dated 8.2.2000. Subsequently, he was granted 2nd ACP in the scale of Rs.4000-6000/- with effect from 01.10.1999 vide Office Order dated 22.01.2004 and retired from railway service with effect from 31.12.2007. According to respondent-railways, applicant was initially absorbed as Khalasi in the scale of Rs.750-940/- with effect from 01.4.1973 whereafter, he was granted regular promotion as V/Driver, Gr.III in the scale of Rs.950-1500/- with effect from 30.5.1985. Subsequently, applicant was granted 2nd ACP in the scale of Rs.4000-6000/- with effect from 01.10.1999. In view of this, respondent-railways have submitted that since during 24 years of service, applicant has been granted one regular promotion as V/Driver, Gr.III and 2nd ACP with effect from 20.5.1985 and 1.10.1999, respectively, applicant is not entitled to any further benefit under the ACP Scheme.

6. Applicant has filed a rejoinder to the counter in which he has stated that vide order dated 7.2.2000, he was absorbed as a PCR Vehicle Driver, Gr.III with effect from 20.5.1985 but not promoted. When his regularization was antedated vide order dated 10.09.1993, he was working as Casual Vehicle Driver, Gr.III and not as a Khalasi and was receiving the salary of Vehicle Driver, Gr.III. Based on this, applicant has reiterated his prayer as made in the O.A.



51

7. We have heard the learned counsel for both the sides and perused the records. We have also gone through the written notes of submissions filed by both the sides.

8. In the matter of benefit under the ACP Scheme, Paragraph-3.2 of the scheme provides "regular service" for the purpose of ACP Scheme ^{which} shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant Recruitment/Promotion Rules. In this view of the matter, in the first instance, the Tribunal has to decide as to what is the regular service for the purpose of ACP Scheme which in other words shall be considered as eligibility service counted for the purpose of regular promotion in terms of the relevant recruitment/promotion rules.

9. The undisputed facts are that applicant had initially been engaged as Casual Truck Helper on daily rated basis with effect from 03.05.1972, he was granted temporary status with effect from 01.01.1981, and while working as such, he was absorbed against PCR Khalasi post with effect from 24.4.1988 vide Memorandum dated 2.5.1988, which was subsequently, antedated to 01.04.1973 vide office order dated 10.9.1993. However, applicant's promotion V/Driver, Gr.III in the scale of Rs.950-1500/- with effect from 30.5.1985 vide Memorandum dated 8.2.2000 has been disputed by the applicant. According to him, by virtue of Office Memorandum dated 7.2.2000 his service was regularized as Driver Gr.III with effect from

52

30.05.1985 and thereafter, he was promoted to the post of Driver Grade II on ad hoc measure in the year 1996.

10. Respondents have produced ^{annexed} to the counter copy of office order dated 2.5.1988, in which the name of the applicant finds place at Sl.No.20. As it reveals, applicant was a temporary status casual labour, was empanelled for appointment to Class-IV category against 40% Construction Reserve and on being declared medically fit, he was appointed as Khalasi 24.4.1988 in the scale of Rs.196-232(RS)/750-940(RP) with effect from 24.4.1988. Admittedly, the date of appointment, i.e., 24.4.1988 has been antedated to 1.4.1973 by a subsequent order, as already, mentioned above. From the above, it is quite clear that the initial appointment of the applicant was Class-IV category which no doubt is 'regular service' and the 'eligibility service' within the scope and meaning of ACP Scheme. This being the position, it cannot be denied that the applicant has ~~not~~ been promoted to V/Driver which is a Gr.III post. In view of this, we hold that the plea of the applicant that vide Memorandum dated 8.2.2000 his service was regularized as V/Driver, Gr.III in the scale of Rs.950-1500/- with effect from 30.5.1985 is not tenable. Accordingly, we decide that the regular service for the purpose of ACP Scheme which in other words shall be considered as eligibility service counted for the purpose of regular promotion in terms of the relevant recruitment/promotion rules is Gr.D category. Therefore,


7

53

applicant is held to have been promoted from Gr.D category to Gr.III with effect from 30.8.1985 and subsequently, in keeping with the provisions of the ACP Scheme, he has been granted 2nd ACP in the scale of Rs.4000-6000/- with effect from 01.10.1999.

Therefore, the benefits which ought to have been granted to the applicant within the scope and meaning of ACP Scheme having been granted to him on completion of 12 and 24 years of service, he is not entitled to further relief, as claimed by him in this O.A.

11. For discussions held above, the O.A. being devoid of merit, is dismissed. No costs.

(R.C.MISRA)
MEMBER(A)



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(A.K.PATNIK)
MEMBER(J)

