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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**O.A.No.469 of 2012**

Cuttack this the 1<sup>st</sup> day of Aug, 2016

Krushna...Applicant

**-VERSUS-**

Union of India & Ors....Respondents

**FOR INSTRUCTIONS**

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

  
**(R.C.MISRA)**  
**MEMBER(A)**

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

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**O.A.No.469 of 2012**

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CORAM

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

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

Krushna  
Aged about 65 years  
S/o-Late Panchu  
Retired Track Man/Engineering/Construction  
Khurda  
Permanent resident of VIII-Godipatia  
P.O-Saragadamakundapur,  
P.S-Jajpur  
Dist-Dharmasala,  
Dist-Jajpur  
Odisha

...Applicant

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

S.Mishra

T.K.Choudhury

**-VERSUS-**

Union of India represented through

1. The General Manager  
E.Co.Railway,  
E.CoRSadan  
Chandrasekharpur,  
Bhubaneswar,  
Dist-Khurda
2. Chief Administrative Officer (Con.)  
E.Co.Railway  
Rail Vihar,  
Chandrasekharpur,  
Bhubaneswar,  
Dist-Khurda
3. Sr. Personnel Officer/Con./Co-ord.,  
E.Co.Railway  
Rail Vihar,  
Chandrasekharpur,  
Bhubaneswar,  
Dist-Khurda

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4. F.A. & C.A.O./Con.,  
E.Co.Railway  
Rail Vihar,  
Chandrasekharapur,  
Bhubaneswar,  
Dist-Khurda

...Respondents

By the Advocate(s)-Mr.D.K.Mohanty

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

Applicant is a retired railway employee. In this Original Application, he has approached this Tribunal seeking for the following relief.


- i) To quash the order under Annexure-A/9 & A/10
- ii) And to direct the respondents to grant 1<sup>st</sup> and 2<sup>nd</sup> financial up-gradation w.e.f. 1.10.1999 under ACP Scheme in Scale of Rs.2650-4000/- and Rs.3050-4590/- and pay the differential arrear salary, DCRG, commuted value of pension, leave salary and arrear pension with 12% interest for the delayed period by extending benefit of order passed in O.A.No.320/2008.

2. Fact of the matter in brief are that initially applicant had been engaged as a casual Khalasi in the S.E. Railways on daily rate basis with effect from 14.5.1979 and was granted temporary status with effect from 1.1.1983. While working as such, he was absorbed against PCR Khalasi post with effect from 24.4.1988, which later on was ante-dated to 1.4.1973. In the meantime, based on the recommendations of 5<sup>th</sup> Central Pay Commission, Railway Administration introduced Assured



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Career Progression (A.C.P.) Scheme to deal with the problems of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues, which came into force with effect from 1.10.1999. As per the conditions of the Scheme, a railway employee is entitled to two financial upgradations during the entire service career on completion of 12 and 24 years regular service, which shall be counted against regular promotion from the grade in which he/she was appointed as a direct recruit.

3. Applicant has submitted that the Screening Committee met and found him suitable for grant of 1<sup>st</sup> financial upgradation which was granted and consequently, his pay scale was upgradated from Rs.2610-3540 to Rs.2650-4000- with effect from 1.10.1999. However, he was not granted the 2<sup>nd</sup> financial benefit under the Scheme with effect from 1.10.1999 even though he had already completed 24 years regular service by then. In the meantime, applicant retired from service with effect from 31.1.2006 on reaching the age of superannuation and accordingly, he has received the retiral benefits as dues <sup>and</sup> as  admissible. Applicant has further submitted that ventilating his grievance he had filed representation dated 30.8.2010 followed by a reminder dated 28.2.2011 to the competent authorities for grant of financial upgradation in the scale of Rs.3050-4590/- with effect from 1.10.1999 and since no action was taken, he moved this Tribunal in O.A.No.721 of 2011. This Tribunal, vide



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order dated 25.10.2011 disposed of the said O.A. with direction to respondents to consider the representation and pass a reasoned order within a stipulated time frame. Respondent No.3 thereafter, vide order dated 12.01.2012(A/9) granted 1<sup>st</sup> and 2<sup>nd</sup> ACP with effect from 1.10.1999 in favour of the applicant in the scale of Rs.2610-3540 and Rs.2650-4000/- which was in supersession of earlier order dated 11.03.2003. However, respondents in compliance with the direction of this Tribunal passed a speaking order dated 23.01.2012(A/10) on the representation preferred by the applicant in which they have turned down the claim of the applicant for grant of scale of Rs.2650-4000 and Rs.3050-4590/- as 1<sup>st</sup> and 2<sup>nd</sup> financial upgradations respectively, under the ACP Scheme like that of one Fagu Sahoo who had been declared fit in B1 medical category whereas applicant has failed to qualify in that category prescribed for the purpose.

Hence, this Original Application seeking relief as referred to earlier.

4. In support of his case, applicant has pleaded that in view of circular dated 31.01.2005(A/4) issued by the Office of Chief Administrative Officer(Con.) in the matter of financial upgradation under ACP Scheme to Group C & D employees of Const. Organization (PCR) on completion of 12 yrs./24 yrs. Regularization - conducting suitability test (counting of 50% of Ty.Service), the service particulars of the applicant ought to



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have been submitted by the immediate controlling authorities for higher grades having regard to clarification issued by the CPO vide letter dated 28.01.2004(A/11) and this having not been done, respondents have committed gross irregularity.

5. The next point urged is that one Fagu Sahoo who had been granted 1<sup>st</sup> and 2<sup>nd</sup> financial upgradation in the scale of Rs.2610-3540 and Rs.2650-4000/- vide order dated 11.03.2003 was subsequently granted the higher scale of Rs.2650-4000/- and Rs.3050-45900/- with effect from 1.10.1999. According to applicant, he being similarly circumstanced with the said Fagu Sahoo, he should have been granted the similar benefit, for non extension of which he has been discriminated against.

6. Opposing the prayer of the applicant, respondent-railways have filed their counter. Since there has been no altercation regarding factual aspects of the matter, we do not feel it apt to repeat the same averments. However, it has been submitted that applicant was absorbed against PCR post as Khalasi in the scale of Rs.750-940/- with effect from 24.4.1988(direct entry grade) which was again ante-dated to 1.4.1973 vide office order dated 6.7.1993. Even though he was regularized in Gr.D PCR post, he<sup>was</sup> allowed to continue and work as Gangman/Trackman in the scale of Rs.200-250/775-1025/- on ad hoc basis due to exigency of work. His medical category being C-1, he was granted 1<sup>st</sup> financial upgradation

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under ACP Scheme in the scale of Rs.2610-3540 and 2<sup>nd</sup> financial upgradation in the scale of Rs.2650-4000/- on hierarchy scale of 5<sup>th</sup> CPC with effect from 1.12.1999 which however, was modified and ante-dated to 1.10.1999. It has been contended by the respondents that applicant was not granted the scale of Rs.2650-4000 from scale of Rs.2550-3200/- as 1<sup>st</sup> financial upgradation due to C-1 medical category in view of the fact that for grant of financial upgradation scale of Rs.2550-3200/- to Rs.2650-4000/-, B-1 medical category is mandatory as per the terms and conditions laid down in Estt.Srl.No.288/99.

7. As regards the claim of the applicant to be treated at par with one Fagu Sahoo, it has been submitted by the respondents that Fagu Sahoo having qualified in the prescribed medical test, i.e. B-1, applicant's case does not stand on similar footing.
8. In the end, it has been submitted that fulfillment of the prescribed medical category B-1 being one of the conditions for promotion is also applicable for grant of benefits under the ACP Scheme and therefore, the Tribunal should not interfere with this.
9. With these submissions, respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.
10. Applicant has filed rejoinder to the counter which more or less contains the same submissions as made in the O.A.



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11. Upon perusal of pleadings, we have heard the learned counsel for both the sides. We have also gone through the written notes submitted by the parties.

12. Admittedly, applicant has been granted 1<sup>st</sup> and 2<sup>nd</sup> financial upgradations under the ACP Scheme with effect from 1.10.1999. The whole grievance of the applicant, as it appears, rests upon the circular dated 31.01.2005(A/4) issued by the Office of Chief Administrative Officer(Con.) in the matter of financial upgradation under ACP Scheme to Group C & D employees of Const. Organization (PCR) on completion of 12 yrs./24 yrs. Regularization - conducting suitability test (counting of 50% of Ty.Service), the service particulars of the applicant ought to have been submitted by the immediate controlling authorities for higher grades having regard to clarification issued by the CPO vide letter dated 28.01.2004(A/11) and this having not been done, respondents have committed gross irregularity. In this connection, we have also gone through the CPO letter dated 28.01.2004(A/11) regarding implementation of ACP Scheme to Group D staff working in the Construction Organization, based upon the Board's instructions, in which the designation of Khalasi had been replaced by Artisan Helper in Technical/Maintenance departments. The cadre structure for the Artisan Helper is as under.



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

13. Having regard to the above, it is the contention of the applicant that had the aforesaid instructions been applied to his case, he could have been granted the benefit of 1<sup>st</sup> financial upgradation in the scale of Rs.2650-4000/- based on the subsequent circular dated 31.1.2005 issued by the CPO as mentioned above.

14. On the other hand, it is the specific case of the respondents that applicant was not granted the 1<sup>st</sup> ACP in the scale of Rs.2650-4000/-, because, as per Estt.Srl.No.288/99 and Establishment Manual, 1966, the <sup>medical category</sup> vision for the post of Khalasi shall be in B-1 category(Recruitment Rule) whereas applicant had been declared fit in C-1 medical category vide SR.DMO/KUR's Memo No.019420.

15. We have considered the rival submissions and given our anxious considerations. We are not inclined to take a view at this stage regarding applicability of circulars issued by the CPO on 28.12.2004 followed by another on 31.1.2005 particularly when the same is not the point of dispute in this O.A.

16. The next point urged is that one Fagu Sahoo who had been granted 1<sup>st</sup> and 2<sup>nd</sup> financial upgradation in the scale of Rs.2610-3540 and Rs.2650-4000/- vide order dated

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11.03.2003 was subsequently granted the higher scale of Rs.2650-4000/- and Rs.3050-45900/- with effect from 1.10.1999. According to applicant, he being similarly circumstanced with the said Fagu Sahoo, he should have been granted the similar benefit, for non extension of which he has been discriminated against.

17. To this, respondents have submitted that Fagu Sahoo having qualified in B-1 medical category had been granted the benefit of 1<sup>st</sup> and 2<sup>nd</sup> APC in the scale of Rs.2650-4000/- and Rs.3050-45900/- with effect from 1.10.1999 and therefore, applicant cannot be said to have been discriminated against.

18. In this connection, it is to be noted that grant of financial benefits under the ACP Scheme being purely personal wholly depends upon the service records of the employee concerned. Therefore, we do not feel it proper to examine the circumstances under which the said Fagu Sahoo had been granted the 1<sup>st</sup> and 2<sup>nd</sup> APC in order to draw parity with the case of the applicant. However, 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 1<sup>st</sup> and 2<sup>nd</sup> financial upgradations already been granted to the applicant with effect from 1.10.1999 in the scale of Rs.2610-3540 and



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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 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”.

19. 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 it 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 1<sup>st</sup> and 2<sup>nd</sup> 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 1<sup>st</sup> and 2<sup>nd</sup> 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 1<sup>st</sup> and 2<sup>nd</sup> 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.


20. In view of the above, order dated **10.12.2012(A/10)** is quashed and set aside.



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21. The above process shall be completed and a decision thereon shall be communicated to the applicant within a period of 120 days from the date of receipt of this order.

22. 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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