

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.1071 of 2012
Cuttack this the 28th day of March, 2016

Giridhari...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.PATNAIK
MEMBER(J)

18
CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

O.A.No.1071 of 2012

Cuttack this the 28th day of March, 2016

CORAM:

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

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

Giridhari

Aged about 66 years

S/o.late Nabaghana

At/PO-Mantira

Dist-Jajpur

Orissa

Retd.Trackman

Office of Deputy Chief Engineer/Construction

East Coast Railway

Station Bazar

Cuttack

Odisha

...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

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

Construction/Coordination

E.Co.Rly

Rail Vihar

Chandrasekharpur
Bhubaneswar
Dist-Khurda

4. Deputy Chief Engineer/Construction
East Coast Railway
Station Bazar
Dist-Cuttack

...Respondents

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

ORDER

R.C.MISRA, MEMBER(A):

Applicant is a retired Railway employee. He has approached this Tribunal aggrieved with the speaking order dated 10.12.2012(A/8) passed by the respondent-railways in pursuance of the orders of this Tribunal in O.A.No.825 of 2010, whereby his prayer for grant of 1st and 2nd financial upgradation in the scale of Rs.2650-4000/- and Rs.3050-4590/-, respectively, with effect from 1.10.1999 has not been acceded to. In the circumstances, applicant in this Original Application has sought for the following relief.

- i) To quash the order of rejection dated 10.12.2012 under Annexure-A/8.
- ii) And to direct the respondents to grant 1st and 2nd financial upgradation 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 promotion with 12% interest for the delayed period of payment.

2. Facts in issue are as under: Initially, applicant had been engaged as Casual Khalasi under PWI©/S.E. Railway in the



year, 1965. He was conferred with temporary status with effect from 1.1.1981 as Gangman in the scale of Rs.200-250/- and subsequently, his service was regularized with effect from 24.4.1988. While the matter stood as such, applicant's regular service was ante-dated to 1.4.1973. Scale of Rs.200-250/- was revised to Rs.750-1025/- based on the recommendations of 4th CPC. However, applicant was granted 1st and 2nd financial upgradation under the ACP Scheme in the scale of Rs.2610-3540/- and Rs.2650-4000/- respectively, with effect from 1.10.1999 and while continuing as such, he retired from railway service on superannuation with effect from 30.6.2006 and accordingly, he has received all the retiral dues admissible to him. As on the date of retirement, applicant had attained 33 years regular service.

3. It is the case of the applicant that CPO, East Coast Railway issued clarification dated 28.12.2004(A/3) in the matter of implementation of ACP Scheme for Gr.D staff working in the Construction Organization. According to this clarification, designation of Khalasi was replaced by Artisan Helper in Technical/Maintenance Department, in the following manner.

Category	Designation	Scale Rs.
Artisan Helper	Artisan Helper-I	2650-4000



	Artisan Helper-II	2550-3200
--	-------------------	-----------

4. Chief Administrative Officer(Con.) vide order dated 31.1.2005(A/4) issued to all Deputy Chief Engineers under his control for re-fixation of pay granted to the employees under the ACP Scheme. As per this order, financial upgradation has to be granted to the beneficiaries as per their cadre promotion, which reads as under.

- i) Staff due for granting ACP benefit, as per rules but not granted till date.
- ii) Staff in service and granted ACP benefit but entitled for higher grades with different dates due to the clarification now received from CPO/ECoR/BBS and also due to adding 50% of temporary service rendered from the date of regularization in PCR cadre.
- iii) Staff on rolls as on 01.10.1999 but retired from service or expired or transferred to open lien thereafter without availing any ACP benefit, under the extant rule.

5. According to applicant, he had rendered 24 years qualifying service as on 1.10.1999. The Screening Committee found him suitable for grant of 1st and 2nd financial upgradation under the ACP Scheme in the scale of Rs.2610-3540 and Rs.2650-400/- vide office order No.40/2003 dated 09.05.2003.

6. Applicant submitted a detailed representation on 12.7.2010 to Res.no.1 for grant of 1st and 2nd ACP with effect from 1.10.1999 in the scale of Rs.2650-4000 and Rs.3050-



22

4590/- and make payment of differential admissible arrears accrued thereon including increase in pension. Since applicant did not receive any response, he moved this Tribunal in O.A.No.825 of 2010. After hearing both the sides, this Tribunal vide order dated 5.9.2012 disposed of the said O.A. with direction to the respondents to examine the case of the applicant in the light of the earlier direction of this Tribunal and pass a speaking order on the entitlement of the benefits as prayed in the O.A.

7. While complying with the above order of this Tribunal, railway administration turned down the claim of the applicant vide speaking order dated 10.12.2012(A/8), which is impugned and called in question in the instant O.A.

8. It is the contention of the applicant that had the respondents taken initiative in pursuance of A/4 order dated 31.1.2005 in order to grant actual financial benefit based on the order/clarification dated 28.12.2004(A/3), there would not have been any bottleneck for granting the 1st and 2nd financial upgradation in the scale of pay of Rs.2650-4000 and Rs.3050-4590/- respectively, with effect from 1.10.1999. According to applicant, no action has been taken by the respondents for grant of benefits under the ACP Scheme in the scale of pay prescribed in the promotional posts in his favour and



therefore, the point raised that the applicant did not qualify the prescribed medical test is false and fictitious.

9. Applicant has pointed out that the scale of pay of Gangman was Rs.200-250/-, which stood revised to Rs.750-1025/- on the recommendations of 4th CPC which was further revised to Rs.2610-3540/- by the 5th CPC. It has been contended that respondents having not examined the case of the applicant at par with one Fagu Sahu who had also been granted 1st and 2nd financial upgradation in the scale of Rs.2610-3540 and Rs.2650-4000/- had later on been granted the higher scale, i.e., Rs.2650-4000 and Rs.3050-4590/- with effect from 01.10.1999 vide order dated 17.05.2011, i.e., five years after his retirement, a discriminatory treatment has been meted out to him. By this what the applicant means to say is that since Fagu Sahu had been granted the benefit after his retirement without being subjected to medical test, in his case, a diversified ^{gent} view should not have been taken.

10. With these submissions, applicant has sought for the relief as aforementioned.

11. Respondent-Railways have filed their counter strenuously opposing the prayer of the applicant. Since the very ground of resistance of the prayer of the applicant emanates from the speaking order dated 10.12.2012(A/8), to

24
 make the matter more conspicuous, it is profitable to quote the relevant part thereof as under.

"The undersigned being the respondent no.3 has carefully gone through the Original Application and records. It is observed that you were initially engaged as casual Khalasi/Gangman w.e.f. 04.1.1972 under PWI/Con/S.E.Rly./Cuttack, granted Ty.status w.e.f. 01.01.81 while working as casual Gangman in scale of Rs.200-250/- /Rs.2610-3540/- and was **regularized as PCR Khalasi in scale Rs.2550-3200/- w.e.f. 24.4.88** and the same regularization against Khalasi post was antedated to 01.4.73 vide SPM/CTC/PCR/05/1/450 dt. 6.7.93. **You are declared medical fit in C-1 medical category vide DMO/S.E.Rly./KUR's Memo No.019487 dated 5.2.1988.** The 1st financial upgradation under ACP scheme in scale Rs.2610-3540 and 2nd ACP in scale Rs.2650-400/- w.e.f. 01.12.99 was granted vide Dy. CPO/BBS's Office Order No.40/2003 dated 09.5.2003 accordingly the pay was re-fixed and you are retired from service w.e.f. 30.6.2006.

Accordingly, as stated in Est.Srl.No.288/99 that seniority cum fitness is to be adjudged while granting ACP benefits and since you have not been qualified in the prescribed medical test, i.e., B-1 category you are not eligible to get 2nd ACP in scale Rs.3050-4590/- like Fagu Sahu and Banamali who have been declared fit in B-1 medical category".

12. Based on the above, respondent-railways have prayed for dismissal of this O.A.

13. We have heard the learned counsel for both the sides and perused the pleadings. We have also gone through rejoinder to the counter filed by the applicant as well as written notes of submission submitted by the parties.



27

14. From the pleadings of the parties, the short point to be determined is 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 or not and if so, to what relief applicant is entitled to.

15. In support of his case, applicant has laid emphasis on A/3 dated 28.12.2004 and A/4 dated 31.1.2005, the basic features of which have been quoted above. A/3 dated 28.12.2004 speaks of implementation of ACP Scheme to Group D staff working in Construction Organization. In Paragraph-1, it has been mentioned that "***as per extant Board's instructions, the designation of "Khalasi" has been replaced by "Artisan Helper" in Technical/Maintenance departments. Artisan Helper has been classified in two categories, viz., Artisan Helper-I carrying scale of Rs.2650-4000 and Artisan Helper-II carrying scale of Rs.2550-3200/-.***

16. It is not the case of the applicant that in pursuance of A/3 dated 28.12.2004, ever his designation from Khalasi had been replaced by Artisan Helper, thus carrying the scale prescribed for Artisan Helper-I and Artisan Helper-II during the course of his employment under the railways.



24

17. In so far as A/4 dated 31.1.2005 is concerned, as quoted above, except making a bald submission that had the respondents taken initiative in pursuance of the said A/4 order in order to grant actual financial benefit as per order/clarification dated 28.12.2004(A/3), there would not have been any bottleneck to grant the 1st and 2nd financial upgradation in the scale of pay of Rs.2650-4000 and Rs.3050-4590/- respectively, with effect from 1.10.1999, applicant has not made any categorical assertion as to which of the provisions under A/4 being applicable to his case, was not considered by the respondents. Therefore, we do not find any justifiable reason that reliance placed by the applicant on A/3 and A/4 will in any way improve his case.

18. It is the contention of the applicant that no action has been taken by the respondents for grant of benefits under the ACP Scheme in the scale of pay prescribed in the promotional posts in his favour and therefore, the point raised by the respondents that applicant was not fit in the prescribed medical test is false and fictitious.

19. The uncontroverted position is that applicant initially had been engaged as casual Khalasi/Gangman w.e.f. 04.1.1972 under PWI/Con/S.E.Rly./Cuttack, granted Ty. Status w.e.f. 01.01.81 while working as casual Gangman in scale of Rs.200-250/- /Rs.2610-3540/- and was regularized as PCR Khalasi in

Q.
he.

scale (Rs.2550-3200/-) w.e.f. 24.4.88. His regularization against the post of Khalasi was antedated to 01.4.73 vide SPM/CTC/PCR/05/1/450 dated 6.7.93. From the above it is clear that although applicant had been working as casual Gangman in the scale of Rs.200-250 which corresponds to Rs.2610-3540/- as per 5th CPC recommendations, he was regularized against the post of Khalasi in the scale of Rs.2550-3200/- with effect from 24.4.2988, which is a lower scale than Gangman only after he being ***declared medical fit in C-1 medical category vide DMO/S.E.Rly./KUR's Memo No.019487 dated 5.2.1988***, which was subsequently, ante-dated to 1.4.1973. Therefore, 1st and 2nd financial upgradations under the ACP Scheme in scale Rs.2610-3540 and Rs.2650-4000/- were granted to him w.e.f. 01.12.99 vide Dy. CPO/BBS's Office Order No.40/2003 dated 09.5.2003 and accordingly, his pay was fixed.

20. Condition No.1 of the ACP Scheme, as introduced by the Railway Administration, provides that "***the ACP scheme envisages merely placement in the higher pay-scale/grant of financial benefits (through financial upgradation) only to the Railway servant concerned on personal basis*** and nor would require creation of new posts for the purpose". On a perusal of Standard/Common Pay Scales, as submitted by the applicant, the following are the standard pay scales.



28

1. S-1 Rs.2500-55-2660-60-3200
2. S-2 Rs.2610-60-3150-65-3540
3. S-3 Rs.2650-65-3300-70-4000
4. S-4 Rs.2750-70-3800-75-4400
5. S-5 Rs.3050-75-3950-80-4590

21. Condition No.7 of the Scheme provides that "***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 posts for the purpose***".

22. Neither the applicant nor the respondents has made it clear regarding applicant's next higher grade in accordance with the existing hierarchy in a cadre/category of posts and/or the cadre/category carrying the scale of pay. In such a situation, it would not be proper to rush to a conclusion that 1st and 2nd financial upgradations that has already been granted to the applicant with effect from 1.10.1999 in the scale of Rs.2610-3540 and Rs.2650-4000/- are not in the next higher grade in accordance with the existing hierarchy in a cadre/category of posts.

23. As regards the contention of the respondents that as per Estt.Srl.No.288/99, seniority cum fitness is to be adjudged while granting ACP benefits and since applicant did not qualify in the prescribed medical test, i.e., B-1 category, he was not considered eligible to get 2nd ACP in scale Rs.3050-4590/-, In this connection, it is to be noted that in the matter of denial of

Rai

benefits under the ACP Scheme on the ground of having not qualified the prescribed medical standard was the subject matter of challenge in O.A.No. 214 of 2012. While disposing of the said O.A. vide order dated 18.01.2016, this Tribunal, vide Paragraphs-16 and 17 held as under.

“16. 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.

17. 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 consideration, he is found to be eligible, to confer on the applicant the resultant



benefits within a period of 120 days from the date of receipt of this order".

24. 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 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.

- 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.

31

25. In view of the above, order dated 10.12.2012(A/8) is quashed and set aside.

✓

26. 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.

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

(R.C.MISRA)
MEMBER(A)

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

BKS