

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.118 of 2012

Cuttack this the 18th day of August 2016

Golaka Bihari Behera...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*

S.K.Pattnaik
(S.K.PATTNAIK)
MEMBER(J)

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

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

HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)

Golakha Bihari Behera
Aged about 64 years
S/o. late Maguni Behera
Retired Store Watchman
O/o.PWI/Con./East Coast Railway
Cuttack
Permanent resident of Vill/PO-Jakhpura, Via-Dhanagadi
PS-Dharmasala
Dist-Jajpur

...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
E.Co.Rly.
E.Co.R.Sadan
Chandrasekharpur
Bhubaneswar
Dist-Khurda
2. Chief Administrative Officer(Con.)
East Coast railway,
Khurda
At present Rail Vihar
Chandrasekharpur
Bhubaneswar
Dist-Khurda

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3. Senior Personnel Officer, Con./Co-Ord.,
East Coast Railway
Rail Vihar
Chandrasekhapur
Bhubaneswar
Dist-Khurda
4. Sr.Divisional Financial Manager
E.Co.Rly,
Khurda Road Division
At/PO-Jatni
Dist-Khurda
5. F.A. & C.A.O./Conn.
E.Co.Rly.
Rail Vihar
Chandrasekhapur
Bhubaneswar
Dist-Khurda
6. Deputy Chief Engineer(Con.)
E.Co.Rly.
Khurda
At present Rail Vihar
Chandrasekhapur
Bhubaneswar
Dist-Khurda

...Respondents

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

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/- w.e.f. 01.10.1999 and pay the differential arrear salary, DCRG, commuted value of pension, leave salary and arrear pension along with 12% interest.

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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 in the year 1972. Subsequently, he was granted temporary status with effect from 1.1.1981 and while working as such, he was regularized against PCR Khalasi post with effect from 24.4.1988. This regularization was later on antedated to 1.4.1973. However, applicant was allowed to work as Store Watchman in the scale of Rs.775-1025/- on officiating basis due to exigency of work. Applicant was found suitable by the Screening Committee for grant of 1st financial upgradation under the ACP Scheme with effect from 01.10.1999 as against normal channel of promotion and as he was not having the requisite medical standard B-1 category for promotion in the scale of Rs.2650-4000/-. Subsequently, based on the clarification issued by the Railways to the effect that the employees who does not qualify for ACP benefit under the normal condition as per Para-7 of the Condition for grant of benefits under the ACP Scheme for the reasons of having no requisite qualification, shall be granted the benefit of the next higher scale in hierarchy of scale of pay prescribed by 5th pay commission and accordingly, applicant has been granted 1st and 2nd financial upgradation in the scale of Rs.2610-3540 and Rs.2650-4000/- respectively in hierarchical scale of pay prescribed for the purpose. However, applicant has laid his

claim based on the decision of this Tribunal in O.A.No.320 of 2008 (Fagu Sahoo vs. Union of India & Ors.).

4. The whole object based on which applicant's prayer has 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 to get the scale of Rs.2650-4000 as 1st ACP and Rs.3050-4590/- as 2nd ACP. However, it has been submitted by the respondents that notwithstanding this ineligibility condition, 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. In view of this, they have prayed that this O.A. is liable to be dismissed being devoid of merit.

5. We upon perusal of the pleadings of the parties have heard the learned counsel for both the sides in great detail.

6. 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.

7. 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

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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 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".

8. 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 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.

9. 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.

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

S.K.Pattnaik
(S.K.PATTNAIK)
MEMBER(J)

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

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