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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.146 of 2013

Cuttack this the 16th day of October, 2017

CORAM:

HON'BLE SHRI S.K.PATTNAIK ,MEMBER(J)
HON'BLE DR.MRUTYUNJAY SARANGI,MEMBER(A)

Kokila Rout, aged about 53 years, W/o. late Dija @ Duryodyhan Rout, retired Bridge Khalasi, O/o. Deputy Chief Engineer (Electrical)/Con., E.Co.Rly, Rail Vihar, Chandrasekharpur, Bhubaneswar, permanent resident of Vill/PO-Mirjitapur, Via/PS-Jenapur, Dist-Jajpur, Odisha

...Applicant

By the Advocate(s)-M/s.N.R.Routray
T.K.Choudhury
S.K.Mohanty
Mrs.J.Pradhan

-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/Construction, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda
3. Senior Personnel Officer/Con./Co-ordn., East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda
4. Deputy Chief Engineer(Electrical)/Con., East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda
5. Senior Divisional Financial Manager, E.Co.Rly, Khurda Road Division, At/PO-Jatni, Dist-Khurda

...Respondents

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

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

Applicant in the present O.A. is the widow of one Dija @ Duryodhan Rout, retired Khalasi, who was working in the office of the Deputy Chief Engineer(Electrical)/Construction, East Coast Railways. Shri Duryodhan Rout had retired from service on 31.8.2007 and expired on 19.8.2010. He had been granted 1st financial upgradation under the ACP Scheme with effect from 1.4.2000, which was subsequently withdrawn by the Sr. Personnel Officer (Con./Coord.) (Res.No.3), East Coast Railway vide order dated 22.6.2005. This action of Respondent No.3 was challenged in this Tribunal by the similarly placed persons through O.A.Nos.665, 740 and 746 of 2005 and others. This Tribunal in its order dated 22.11.2007 allowed the O.As and set aside the order dated 22.6.2005. Applicant's husband had filed O.A.No.746/2005 which was disposed of on 31.7.2008 directing the respondents to grant financial upgradation to the applicants and rejecting the respondents' contention that the appointment to the post of Bridge Khalasi was a promotion.

This order of the Tribunal was challenged before the Hon'ble High Court in W.P. © No.18718 of 2008 and the Hon'ble High Court vide order dated 29.04.2009 dismissed the Writ Petition. Subsequently, the applicant had submitted an application to Respondent No.3 for grant of 2nd financial upgradation on completion of 24 years of service by her

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husband. Since no reply was received, the applicant had filed O.A.No.1070/12 before this Tribunal which disposed of the O.A. on 11.1.2014 directing the respondents to take a decision on her representation. On 4.2.2013, the Chief Administrative Officer(Personnel), East Coast Railways passed a speaking order rejecting the claim of the applicant on the ground that her husband had already availed one regular promotion and one financial upgradation under the ACP Scheme within 24 years of regular service and therefore, he was not entitled to further financial upgradation under the existing rules. Aggrieved by the above order dated 4.2.2013, applicant has filed the present O.A. praying for the following reliefs:

- i) To quash the order of rejection dated 04.02.2013 under Annexure-A/9.
- ii) And to direct the Respondents to grant 2nd financial upgradation under the ACP Scheme w.e.f. September, 2006 in favour of Dija @ Duryodhan Rout, Ex-Bridge Khalasi in PB-1 of Rs.5200-20200/- with GP Rs.2800/-.
- iii) And direct the Respondents to pay the differential arrear salary, leave salary, DCRG and pension with 12% interest for the delayed period.

2. Applicant has based hers prayer on the following grounds.

- i) As per the ACP Scheme those who have worked for a period of 12/24 years in a particular post without any regular promotion are entitled for 1st and 2nd financial upgradation. The applicant's husband had already completed 24 years of regular service by September, 2006 and

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therefore, he was entitled to 2nd financial upgradation.

- ii) As per the orders of this Tribunal, Bridge Khalasis are entitled for 1st financial upgradation under the ACP Scheme with effect from 1.10.1999. Applicant's husband had obtained the 1st ACP with effect from 1.10.1999 following the orders passed by this Tribunal in O.A.No.746/05 and is therefore, entitled to 2nd financial upgradation.
- iii) The impugned order dated 4.2.2013 has erroneously reopened the issue of applicant's husband's promotion from Khalasi to Bridge Khalasi since this Tribunal had already settled the matter and it has been upheld by the Hon'ble High Court.

3. Respondents in their counter reply filed on 31.1.2014 have contested the claim of the applicant. It is their contention that the husband of the applicant was engaged under the S.E.Railway on casual daily rate basis with effect from 3.7.1972 and was granted temporary status on 1.1.1981. He was absorbed in Group-D category as Khalasi against 40% PCR posts in the scale of Rs.750-950/- with effect from 1.4.1984. He was regularized against 60% PCR posts as Bridge Khalasi with effect from 1.4.1988 in the scale of Rs.950-1500/- - Rs.3050-4590/-. He retired from railway service on superannuation with effect from 31.8.2007, after rendering 24 years and 10 months of qualifying service. He had been given one regular promotion in the PCR post as Bridge Khalasi in the scale of Rs.950-1500/- - Rs.3050-4590/- with effect from 1.4.1988 and granted one financial upgradation under the ACP Scheme with effect from 1.4.2000. Since he had already got one regular

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promotion and one financial upgradation, he is not entitled to any other financial upgradation on completion of 24 years of regular service.

4. Applicant in her rejoinder filed on 25.6.2014 has challenged the contention of the respondents that her husband had already got one promotion and one financial upgradation. She has cited the orders of this Tribunal dated 22.11.2007 in O.A.Nos.740/05 and 660/05 and others and argued that it has already been held by this Tribunal that the financial upgradation in favour of beneficiaries including the husband of the applicant is only the 1st financial upgradation and therefore, her husband is entitled to 2nd financial upgradation on completion of 24 years of service.

5. We have heard the learned counsel for both the parties and perused the documents submitted by them. Learned counsel for the applicant has submitted RBE No.69/2004 dated 31.3.2004 which stipulates that 50% of temporary status casual labourer's service on absorption in regular establishment may be taken into account towards the minimum service of 12/24 years for the grant of benefit under the ACP Scheme on the analogy that the same is also reckoned as qualifying service for pension. However in the present case there is no dispute on the completion of 24 years of service by the applicant's husband for the purpose of consideration of financial upgradation. The only issue that remains to be settled is whether the applicant's

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husband had got one promotion before getting his financial upgradation with effect from 1.4.2000.

6. In this connection our attention has been drawn to the judgment passed by this Tribunal in O.A.No.660/05 dated 22.11.2007 in which similar issue has been discussed, analyzed and a definitive direction has been issued in respect of one Rathi Sahoo who is similarly placed person as that of the applicant's husband in the present O.A.. The first paragraph of the said judgment reads as follows:

"1. The applicant was initially engaged as casual Khalasi under BRI/SER/CTC in December, 1972, and was granted temporary status with effect from 1.1.1981 as Bridge Khalasi in the scale of 210-290. Under the 60% PCR Posts, his services were regularized with effect from 11.4.1985, the status of Bridge Khalasi was converted from semi-skilled to skilled with an upward revision of pay scale of Rs.260-400 by an order of this Tribunal, the pay scale of 950-1500 was made available to all the skilled Bridge Khalasis. Thus, all the Bridge Khalasies earlier placed in Rs.210-290 (revised as Rs.800-1160) had been placed in 950-1500/-, whose replacement scale was 3050-4590. The Railways have introduced ACP Scheme for grant of financial upgradation to those who did not get any promotion, after 12/24 years of service. By an order dated 8.10.2003, the applicant was given financial upgradation in the scale of 4000-6000 with effect from 1.4.2000 and the amount thereof was paid to him in June, 2005. However, on 22.6.2005 the aforesaid order dated 8.10.2003 was cancelled without any notice against which applicant moved a representation dated 29.08.2005. Without any notice, the respondents implemented the cancellation order dated 22.6.2005. The applicant has challenged the said order dated 22.6.2005(Annexure-A/8) as according to him, there being no promotion right from his

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initial induction, he is entitled to the benefit of ACP Scheme”.

The observation made by this Tribunal reads as under:

“2. Though records in this case have not been called for, in so far as the documents are concerned, all are the same in both the cases and identical counter has been filed. As such, in this case also, there is no question of the applicant having been granted first Rs.196-232 and later promoted as Bridge Khalasi as contended by the respondents in their counter. The very first appointment in this case should, therefore, be held as Bridge Khalasi and all that happened earlier was upward revision of pay scale and as in the other O.A.No.740/05. This OA also is allowed. Respondents are directed to work at the period when the applicant completed 12 years of regular service (including 50% of temporary status) and based on the same, the ACP shall be afforded to the applicant. Order dated 22.06.2005(Annexure-A/9) is hereby quashed and set aside so far as the same related to the applicant. But the respondents shall work out the ACP as stated above and after adjusting the amount paid to the applicant the balance shall be payable. His pensionary benefits shall be revised correspondingly. Suitable orders be passed within a period of two months from the date of communication of this order and arrears paid within two months thereafter”.

7. The same principle was upheld in the judgment of this Tribunal in O.A.Nos.745 and 746 of 2005. For reasons of clarity, we quote the relevant portions of the judgment herein below:

“Both the applicants in these OAs were engaged under the Railway as Bridge Khalasi and as the applicants were entitled for the benefit of ACP Scheme, as adopted by the Railway Board, on consideration of the service records and particulars they were allowed the benefit of ACP Scheme. But by order dated 22.06.05 the second financial upgradation, i.e., the benefit of ACP Scheme as covering the period of 24 years in regular service has been cancelled. Aggrieved by the above orders,

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the applicants filed these O.As. It appears from the averments and the grounds urged in the applications that the cancellation orders have been issued by the Respondents on the ground that the applicants having already been given a promotion as Bridge Khalasi from the post of Khalasi, were not entitled to 2nd financial upgradation.

A similar question was also raised in a batch of Original Applications before this Tribunal in O.A.No.741/05 and other connected O.As. The above applications were considered by this Tribunal. As per the order dated 04.03.08 this Tribunal held that from the records and Service Book made available to this Tribunal that the change of the nomenclature of Khalasi to Bridge Khalasi cannot be taken as a promotion. If so, as held by this Tribunal that non-payment of benefits now given to the applicant as per the order dated 01.04.2000, taking into consideration the first benefit of ACP Scheme allowed, the second financial upgradation cannot be cancelled.

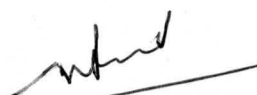
We heard Mr.N.R.Routray, Ld. Counsel for the applicant and Mr.Ashok Mohanty, Sr.Counsel for the Respondents and perused the records made available to this Tribunal. It is admitted fact before us that the applicants were engaged in the Railways in the post of Khalasi and regularized in the group D category in the pay scale of Rs.750-940/- w.e.f. 01.04.1984 and was confirmed with group D PCR post w.e.f. 01.04.1989. If so, the stand taken by the Respondents that while they were working as Khalasi on casual basis they were given a promotion as Bridge Khalasi is not acceptable and not tenable. As aforesaid, this question was fully answered by this Tribunal in O.A.No.741/05 in favour of the claim of the applicants. Adhering to the same reasons and the conclusions, we are allowing these OAs by quashing the order dated 22.06.05 by which the ACP benefit granted to the applicants has been cancelled. Consequently, Respondents are hereby directed to ensure that there is no depletion in the emoluments of the applicants and if any amount has been recovered from the applicants, that shall be refunded to them forthwith. Further it is directed that all the service benefits of the applicants have to be allowed".

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8. Following the above judgment, it is quite clear that the applicant's husband had got only one financial upgradation during his service career. His initial regular appointment is to be taken as Bridge Khalasi as directed in O.A.No.660/05. Therefore, applicant's husband is entitled to 2nd financial upgradation under the ACP Scheme with effect from September, 2006 when he had completed 24 years of qualifying service following the principle laid down by this Tribunal in the judgments discussed above.

9. In view of the above, the impugned order dated 4.2.2013(A/9) is quashed and set aside. The Respondents are directed to grant 2nd financial upgradation in favour of the husband of the applicant with effect from September, 2006 when he had completed 24 years of qualifying service along with all consequential financial benefits. This exercise shall be completed out within a period of three months from the date of receipt of this order.

10. In the result, the O.A. is thus allowed. No costs.


(DR.MRUTYUNJAY SARANGI)
MEMBER(A)


(S.K.PATTNAIK)
MEMBER(J)

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