

21

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 221/2013
this the 27th day of January, 2017

CORAM

**HON'BLE SHRI R.C.MISRA, MEMBER(A)
HON'BLE SHRI S.K.PATTNAIK, MEMBER (J)**

Hura aged about 69 years S/o Late Sh. Hari, retired Trackman, Engineering-Construction, E.Co.Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, permanent resident of Vill. Damodarpur, PO Mantira, District Jajpur, Odisha. **...Applicant**

By the Advocate : Shri N.R.Routray

-VERSUS-

1-Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, District Khurda.

2-Senior Personnel Officer, Construction/Coordination, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, District Khurda. **...Respondents**

By the Advocate : Shri D.K.Mohanty

O R D E R

Per R.C.MISRA, MEMBER(A) :

The applicant in this O.A. has prayed that the impugned order Annex. A/9 dated 11.03.2013 (Annex.A/9), be quashed and the respondents be directed to grant him 1st and 2nd financial upgradation under ACP Scheme in the scale of Rs.2650-4000 and Rs. 3050-4590 and accordingly release differential arrear of salary from 1.10.1999 to 31.12.2003 as also other retiral benefits accordingly alongwith interest @ 12%.

2. The facts in brief are that the applicant, Hura was initially appointed as a Casual Khalasi in S.E.Railway and granted temporary status w.e.f. 1.1.1981 in the scale of Rs. 200-250. The scale of Rs. 200-250 was revised to the scale of Rs. 775-1025 by the 4th Pay Commission, the scale of Rs. 775-1025 was thereafter revised to Rs. 2610-3540 by 5th Pay Commission w.e.f. 1.1.1996 and

R. Misra

22
regularization of applicant antedated to 1.4.1973 in view of order dated 26.3.1989 issued by the CPO, SE Railway, Garden Reach in scale of Rs. 750-940 meant for the post of Khalasi. The 5th Central Pay Commission in its report had made certain recommendations to Assured Career Progression (ACP) Scheme for the Central Government Civilian employees in all Ministries and Departments. The Scheme needs to be viewed as Safety Net to deal with problems of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. Para 5 of the ACP Scheme a copy of which is enclosed as Annex. a/2 to the O.A., reads as follows :

"Two financial upgradation under the ACP Scheme in the entire Railway service career of an employee shall be counted against regular promotions (including in-situ promotion and/or any other promotion including fast track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean 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."

3. The applicant retired from service w.e.f. 31.12.2003 on attaining the age of superannuation. At the time of retirement, the applicant had completed more than 33 years of qualifying/regular service. All the retirement and superannuation benefits were paid to him in the scale of Rs. 2650-4000 which speaks that the applicant though rendered more than 24 years of regular / qualifying service as on 1.10.1999 but he was granted one promotion / financial upgradation under ACP Scheme. He was granted 1st and 2nd financial upgradation by order dated 11.3.2003.



22

By way of financial upgradation, he was granted Rs. 2610-3540 and Rs. 2650-4000 as 1st and 2nd financial upgradation w.e.f. 1.12.1999 and accordingly his pay fixed vide Office Order dated 27.3.2003. Copy of order dated 27.3.2003 is annexed as Annex.A/4 to the O.A. The CPO, East Coast Railway, issued a clarification to the then Dy. CPO (C) Bhubaneswar regarding implementation of ACP Scheme to the group 'D' staff working in construction organization. As per the clarification the designation of Khalasi was replaced by Artisan Helper in Technical / Maintenance Department. Further, there is no scale of Rs. 2610-3540 in this category in Technical / Maintenance Departments. The normal avenue of promotion for Artisan Helper - I from scale of Rs. 2650-4000 is Technician Gr. III in the scale of Rs. 3050-4590. Chief Administrative Officer (Construction), issued letter 31.01.2005 to all Dy. Chief Engineers under his control for refixation of pay granted to the employees under ACP Scheme. It is submitted that order dated 31.1.2005 itself makes it clear that under the ACP Scheme upgradation has to be granted to the beneficiaries as per their cadre promotion.


4. As per order of 31.1.2005 grievance of the applicant is that his candidature ought to have been referred to the screening committee by the respondents suo moto, but respondents failed to implement the order dated 31.1.2005 in its letter and spirit. The applicant retired in December 2003 and received all his superannuation as well as retiral benefits in scale of Rs. 2650-4000.

5. The applicant got to know that similarly placed persons have filed O.A. for grant of higher scale as 1st and 2nd ACP in view of order issued by the CPO, East Coast Railway, applicant submitted his representation to respondent No. 2 with a prayer for grant of the same and further prayed for payment of differential benefits.



Representation of applicant is filed with the OA as Annex. A/7. Applicant has pleaded that similar matters bearing No. 320/2008 and 247/2010 have been disposed of by this Tribunal and applicants therein have been granted financial upgradations in the higher scale of pay. It is submitted by him that he is getting his pension in a lower scale each and every month, and as such cause of action arises every month, hence the delay caused in approaching this Tribunal may be condoned by exercising the power conferred under Sec. 21(3) of the Administrative Tribunals Act. The applicant has cited the judgment of Hon'ble Apex Court in the case of **UOI & Ors. Vs. K.C.Sharma** reported in 1997 SCC Vol. 7 Page 721 and **Maharaj Krishna Bhatt and Anr. Vs. State of J&K and Ors.** reported in (2008) 2 SCC (L&S) 783 in which Hon'ble Court held that this Tribunal has powers to condone delay if any caused for filing O.A. while extending the benefits of similar order.

6. It is mentioned in the application that the Railway Board issued certain clarification after issuance of the original ACP Scheme regarding grant of higher grades or grant of financial upgradation according to the cadre of promotion. Railway Authorities after receiving the same, issued order to furnish service particulars of the staffs working under different deputies and as nothing was communicated to him in response to his representation, he was constrained to approach this Tribunal by filing a OA bearing No. 49/2013 which was disposed of on 6.2.2013 at the stage of admission. A direction was issued in the said OA by this Tribunal to examine the grievance of applicant as raised in his representation and communicate the result thereof in a reasoned and speaking order. The order is filed as Annex.A/8 with this O.A. Thereupon, respondent NO. 2 vide order dated 11.3.2013 passed the speaking order and disposed of the representation of the



25

applicant in compliance to order dated 6.2.2013 passed by this Tribunal in OA No. 49/2013. Respondent No. 2 rejected the claim of applicant to get scale of Rs. 2650-4000 and 3050-4590 as first and second ACP on the ground that this applicant fails to qualify in the prescribed medical test i.e. B1 category. The applicant in the OA has mentioned specifically that respondent No. 2 suppressed regarding the date of medical test intentionally that too with a mala fide intention only to frustrate the claim of the applicant.

7. It is contended by the applicant in his OA that one Shri Fagu Sahoo whose service was antedated to 1.4.1973 like that of applicant had approached this Tribunal by filing OA No. 320/2008 with a prayer for grant of 2nd financial upgradation under ACP Scheme w.e.f. 1.10.1999 in the scale of Rs. 3050-4590. Not only this, the respondents in their original counter had taken the stand that said Shri Sahoo had already been granted both the ACPs in the respective scales w.e.f. 1.12.1999 as per the letter dated 11.3.2003. However, as per the direction of this Tribunal, respondents have passed order under Annex.A/10 conferring scale of Rs. 2650-4000 and 3050-4590 w.e.f. 1.10.1999 upon said Shri Fagu Sahoo as 1st and 2nd financial upgradation under the ACP Scheme. In order to harass applicant and to deprive him of his legitimate claim, respondents had not extended the benefit of scale of pay at par as were granted to the said Fagu Sahoo to the present applicant.

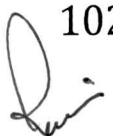
8. Applicant has reiterated the fact that it is not the case of respondents that any initiative has been taken by them after the order dated 31.1.2005 under Annex.A/6 for grant of actual financial benefits as per clarification dated 28.12.2004 and when respondents have not taken any steps for grant of higher scale under ACP then question of appearance and passing of medical test

P

is absolutely false and vague and the fact remains that he never appeared in any medical test after 31.01.2005, hence, the stand taken by the respondents that applicant was unfit in B-1 medical category is incorrect. It is contended that respondents may be directed to produce medical certificate.

9. The respondents filed their detailed reply and have admitted that date of absorption of applicant in Grade D post was antedated to 1.4.1973 and he had been regularized in Grade D PCR post in scale of Gangman on officiating basis due to exigency of work and his initial medical fitness at the time of absorption as recorded in his service record is C-1 category vide Memo No. 019411 dated 21/22.1.1988. On completion of 12/24 years of service and as per his eligibility taking into ^{account} conditions prescribed in Estt. Srl. No. 288/99, he had been given 1st and 2nd ACPs w.e.f. 1.12.1999. He was retired on superannuation after rendering 30 years and 6 months service on 31.12.2003 and was accordingly paid all retiral dues as per his eligibility. As regards OA No. 49/2013 filed by the applicant, the respondents have, as per directions of this Tribunal, considered and rejected the representation of the applicant on 11.3.2013 being beyond purview of consideration.


10. The Dy. CPO (C), Bhubaneswar, vide his letter dated 30.11.2004 sought clarification from Chief Personnel Officer on certain points required for ACP Scheme to PCR Gr. D staff of construction organization. The instructions at Srl. No. 1 of the said letter mentions that designation of Khalasi has been replaced by the word Artisan Helper in Technical / Maintenance Department. Applicant has been relying upon the said clarification whereas, he discharged his duties of Gangman (Trackman) in scale of Rs. 775-1025 (2610-3540) on officiating basis, thus, contents of Annex. A/5



are not applicable and that is why, his claim was denied. The respondents have submitted that the conditions enumerated in the Board's letter for grant of ACP benefits vide para 6 of Srl. No. 288/99(a) fulfillment of normal promotional norms prescribed such as bench mark, trade test, departmental examination, seniority-cum-fitness etc. for grant of financial upgradation, need to be ensured while granting benefits of ACP Scheme. Applicant's initial medical fitness at the time of absorption is recorded as C-1 category and since he had not fulfilled the conditions as per Srl. No. 288/99, his claim for financial upgradation in scale of Rs. 2650-4000 and scale of Rs. 3050-4590 w.e.f. 1.10.1999 was denied accordingly since he was not eligible for the same.

11. Respondents have pleaded that applicant cannot claim benefits based on the outcome of Fagu Sahoo's case as Shri Sahoo had been declared fit in B-1 medical category and hence, he was granted both the ACPs. The applicant was denied the same benefits because the facts and the merits of the said cases are totally separate and applicant for claiming the similar relief, has to establish his own case.

12. The respondents have also taken a plea that applicant had not disputed the Office Order dated 27.3.2003 prior to his superannuation and has now challenged it after a lapse of ten years. Factually, as per applicant's eligibility, he has been granted both the financial upgradations vide Office Order dated 92/2003 dated 27.3.2003 and the Railways had followed the guidelines issued by the Railway Board from time to time and all required steps were taken by respondents to extend the rightful benefits in favour of applicant, hence, the OA being devoid of merit, be dismissed.



13. Applicant has also filed a rejoinder reiterating his stand and while relying upon medical memo dated 22.01.1988 and insisting upon the fact that respondents have not conducted any medical test while granting two ACPs to him. He has submitted that as per orders dated 28.12.2004 and 31.1.2005 of the Chief Personnel Officer, Bhubaneswar, his case should have been reviewed for grant of 1st and 2nd financial upgradations in higher scale according to hierarchy. He has submitted that for grant of financial upgradation seniority cum fitness is the only criterion prescribed in the ACP Scheme in case of Group D employees. Not only this, the ACP Scheme has made it clear that holding of ad hoc substantive temporary posts has no bearing for grant of financial upgradations, hence, the plea that being a Trackman applicant has been granted financial upgradation according to his cadre is also not correct. The applicant relying upon decisions of this Tribunal given in OAs No. 462, 214 and 157 of 2012 etc. prayed for implementing the ratio in his case also. Relying upon various Supreme Court judgments he has prayed for extending similar benefits for which this Tribunal has ample powers.

14. Having heard learned counsels for both sides, we have perused the records.

The facts of this case indicate that applicant was a casual khalasi in the South East Railway, and was given temporary status on 1.1.1981. He was regularized in Group 'D' PCR cadre w.e.f. 24.4.1988. However, the date of regularization was antedated to 1.4.1973. Further, on completion of 12/24 years of regular service, and as recommended by the Screening Committee as per eligibility, taking into account the conditions prescribed in Estt. Srl. No. 288/1999, the applicant was granted 1st and 2nd financial upgradations under ACP Scheme in the scale Rs. 2610-3540 from

R.

89
scale of Rs. 2550-3200 and Rs. 2650-4000 from scale of Rs. 2610-3540, w.e.f. 1.12.1999, with the approval of competent authority. The applicant retired from service on reaching the age of superannuation on 31.12.2003. It is the admitted position that applicant has been granted two financial upgradations before he retired. The grievance of applicant is, however, that these financial upgradations should have been sanctioned in the scales of Rs. 2650-4000 and 3050-4590 w.e.f. 1.10.1999, and the issue for discussion is whether he is entitled to such benefit at this point of time.

15. The applicant had approached the Tribunal earlier by filing OA No. 49/2013, and this OA was disposed of by an order dated 6.2.2013, by which, direction was given to respondents to consider pending representation dated 16.6.2012 submitted by applicant, and communicate the decision in a reasoned and speaking order to the applicant within a period of two months from receipt of a copy of the order. Respondents complied with orders of the Tribunal and communicated to the applicant a speaking order dated 11.3.2013 by which the prayer of the applicant was rejected, thereby giving rise to further grievance of the applicant which is ventilated before the Tribunal in this second round of litigation.

16. The grounds taken by applicant for canvassing his case are that respondents have taken a false stand in the order of rejection that the applicant was unfit in B1 medical category, without actually conducting any medical test, and have not considered the case of applicant at par with one Fagu Sahu who was earlier granted 1st and 2nd financial upgradation under ACP Scheme in the scale of Rs. 2610-3540 and Rs. 2650-4000 and was later placed in the scale of Rs. 2650-4000 and Rs. 3050-4590 w.e.f. 1.10.1999. The

Q

30
order conferring this benefit was dated 17.5.2011, which was five years after his retirement.

17. The respondents in their counter-affidavit submit that the applicant's initial medical fitness at the time of absorption as found in the service record was C-1 category. The screening committee considered the case of applicant for 1st and 2nd financial upgradation as per the conditions prescribed in Estt. Srl. No. 288/09, and based upon its recommendation, the competent authority granted the upgradation in the scales of Rs. 2610-3540 and Rs. 2650-4000. The applicant is relying upon a letter dated 28.4.2004 (placed at annexure A/5 of the OA) in which it is clarified that the designation of Khalasi has been replaced by that of Artisan Helper. Respondents have submitted that this letter is not applicable to present applicant, since he has discharged his duties in the post of Gangman (Trackman) in the scale of Rs. 775-1025 revised to Rs. 2610-3540.

The submission of the respondents is that grant of ACP will depend upon fulfillment of normal promotional norms. The applicant was given medical category of C-1 at the time of absorption, and has not fulfilled the conditions of grant of financial upgradation in the scale of Rs. 2650-4000 and Rs. 3050-4590. Respondents have also replied to the point raised by the applicant about applicant's case being similar to one Fagu Sahu's case. They have denied the claim made by the applicant by submitting that Fagu Sahu was in a different medical category, i.e. B1, and therefore the 'similarly placed' claim made by the applicant is misplaced. The respondents have raised another valid point that applicant was granted the 1st and 2nd financial upgradations vide order dated 27.3.2003 prior to his retirement. Having acquiesced in the

D

position, the applicant approached the Tribunal after a gap of ten years by filing OA No. 49/2013 and thereafter the present O.A. is not maintainable.

18. There is no doubt that the applicant has brought up the grievance before respondent authorities, after considerable delay. Applicant retired on superannuation on 31.12.2003, but submitted his representation on 16.6.2012. During consideration of the earlier O.A., the learned counsel for the Railways had raised objection regarding delay and limitation, by citing the UP Jal Nigam case, decided by Hon'ble Apex Court. The learned counsel for applicant had submitted that financial claims are a continuous cause of action, and the law of limitation should not apply. We have noted that in similar matters earlier heard and decided by the Tribunal, limitation was not considered to be an impediment to consideration of the claim, because ACP benefit is a personal claim of an employee, and grant of ACP does not affect in any way the rights of other parties. It is not a matter of promotion where willy-nilly other employees' interests would be involved, and delay and laches will create prejudicial impact on other parties. Grant of ACP also involves re-fixation of pay and pension and will have cascading effect. The Tribunal in similar matters in the past has not allowed limitation to stand in the way, and we do not intend to make any deviation from the precedent. Moreover, applicant has submitted that one Fagu Sahu was earlier granted 1st and 2nd ACP in the scale of Rs. 2610-3540 and Rs. 2650-4000 w.e.f. 1.12.1999. But subsequently as per orders of the Tribunal, respondents have passed orders conferring the scale of pay of Rs. 2650-4000 and Rs. 3050-4590.

19. The applicant has relied upon the law laid down by the Apex Court in a plethora of decisions, that similarly placed persons

P. S.

should be awarded the same benefit. The contrary claim of the respondents is that the present applicant is not similarly placed as the said Fagu Sahu who was declared fit in B-1 medical category, whereas the present applicant was placed in C-1 medical category. The argument is therefore that the same benefit as given to Fagu Sahu cannot be rightfully extended to present applicant. However, the applicant has brought to our notice the order of the Tribunal in OA No. 462/2012 decided on 8th February, 2016, which he claims covers the contentions made by him in this O.A. We, therefore, need to go over this order. The applicant in that OA came to the Tribunal with a similar prayer. The prayer of the applicant in that O.A. for grant of 1st ACP in the scale of Rs. 2650-4000 and grant of 2nd ACP in the scale of Rs. 3050-4590 was rejected by respondents on the ground that he had not qualified in the prescribed medical test, i.e. B1 category, unlike Fagu Sahu who had qualified. While deciding the matter, the Tribunal made reference to the orders of the Tribunal in O.A. No. 214/2012 decided on 18.1.2016 involving the same issue. The order of the Tribunal in OA No. 214/2012 was extensively quoted, since the issue relevant to the case, i.e., qualifying the medical test in B1 category was discussed in detail. The observation of the Tribunal as would be pertinent to this case is quoted below :

"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 dated 12.1.2012 and 18.1.2012 to be legally sustainable. Ideally, the applicant should have been asked to go through a medical test for the determination of his fitness in order

Ques

to consider his eligibility for ACP benefit. The applicant has however, retired on 10th 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 dated 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 reconsideration, 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."

It may also be mentioned here that OA No. 462/2012 was decided in favour of the applicant, following the precedent in OA No. 214/2012, and based upon the observations as quoted above.

20. Therefore, the disputed issue in this OA has been addressed by another coordinate Bench of this Tribunal, and decided in the manner stated above. The precedence set in the previous judgments is to be respected, according to acknowledged principles of judicial discipline. In this regard, we consider it appropriate to quote from the decision of the Apex Court in the matter of **S.I. Rooplal and Anr. Vs. Lt. Governor, through Chief Secretary and Ors.** in C.A. Nos. 5363-64 of 1997 with CA Nos. 5643-44 of 1997, decided on Dec. 14, 1999.

"This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A co-ordinate Bench can not pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement."

21. In course of hearing of the case, as well as from perusal of records, it has been clarified to us that persons similarly placed have been given relief by this Tribunal. In the judgment of the Constitution Bench in the matter of **K.C. Sharma Vs. Union of India and Ors.** (1997) 6 SCC 721, the Apex Court has decided as follows :

34
"Having regard to the facts and circumstances of the case, we are of the view that this was a fit case in which the Tribunal should have condoned the delay of the application and the appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal."

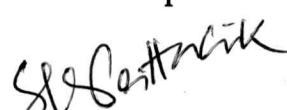
In the case of *State of Karnataka Vs. C. Lalitha* (2016) 2 SCC 747, it was decided that "service jurisprudence evolved by the Court from time to time postulates that all persons similarly situated should be treated similarly." In the matter of *State of UP & Ors. Vs. Arvind Kumar Srivastava and Ors.* (2015) 1 SCC (L&S) 191, the Apex Court reiterated the law in the following words :

"The normal rule is that when a particular set of employees is given relief by the Court all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Art. 14 of the Constitution of India."

22. In view of aforesaid discussions, we are of the opinion that the case of the applicant needs to be reconsidered in the hands of the respondent authorities in the light of precedent decisions of the Tribunal in similar cases. We, therefore, dispose of the O.A. with the following orders :

Q
 The impugned orders dated 11.3.2013 are quashed and set aside. The matter is remitted back to respondents for reconsideration of the claim as per observations made above, and other conditions as applicable to ACP for conferment of the benefits on the applicant within a period of 120 days of receipt of this order.

23. The O.A. is thus allowed to the extent stated above, with no costs to the parties.


(S.K.Pattnaik)
 Member(J)


(R.C.Misra)
 Member(A)