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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. N0. 613 of 2013

Cuttack the 16th day of September, 2013

CORAM

HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)
HON'BLE MR. R. C. MISRA, MEMBER (ADMN.)

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Nikhil Kumar Kar, aged about 53 years, Son of Subodha Chandra Kar resident of MIG-I, 16/9, BDA Colony, Chandrasekharpur, Bhubaneswar at present working as a Technician-III/SMW Office of CWM/CRW/E.Co.Rly/Mancheswar, Bhubaneswar, Dist. Khurda, Odisha.

...Applicant

(Advocates: M/s-N.R. Routray, T.K. Choudhury, S.K. Mohanty, Smt. J. Pradhan)

VERSUS

Union of India Represented through -

1. General Manager, East Coast Railway, E.Co.R Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.

2. Chief Workshop Manager, Carriage Repair Workshop,East Coast Railway, Mancheswar, Bhubaneswar, Dist-Khurda.

3. Workshop Personnel Officer, Carriage Repair Workshop,East Coast Railway, Mancheswar, Bhubaneswar, Dist-Khurda.

... Respondents

(Advocate: Mr. T. Rath

O R D E R (Oral)

A.K. PATNAIK, MEMBER (JUDL.)

The case of the Applicant, in nut shell, is that he joined/appointed as a Skilled Artisan /MW in the Railway on 6.4.1988 (in the scale of pay of Rs.950-1500/-) and undergone in-service training

for a period of six months. He successfully completed the training. Thereafter, he was continued in service without any break and has got the increment. While continuing as such, he was regularized vide order dated 4.6.1997 in the post of Mechinist Grade III in pay scale of Rs.950-1500/-. The CPO/GRC/SERly, vide Estt.Sl.No.288/99 issued ACP Scheme to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. As per para 3.1 reads with para Nos.4&5 of the said scheme, the Group B, C & D employees on completion of 12 years and 24 years of regular service are eligible to get first and second financial up gradation under the said ACP scheme. The Railway Board issued RBE No. 64/2004 with a clarification regarding computation of 50% casual service with temporary status period as qualifying service for grant of financial up gradation under ACP scheme on the analogy that the same should be reckoned as qualifying service for pension. By issuing RBE No.64/2004 the Railway Board made it clear that any service computed as qualifying service for the purpose of pension should be computed as qualifying service for grant of financial up gradation under ACP Scheme. Further case of the Applicant is that temporary appointment is made against sanction post. As per Rule 18 of the Railway Pension Rule on

completion of 10 years continuous service, a temporary Railway servant is ~~legible~~ eligible to get minimum pension. Rule 18 of the Railway Pension Rule 1993 is similar that to Rule 69 wherein it has been made clear that on completion of 10 years qualifying service an employee (regular) is eligible to get minimum pension. As such the entire temporary period is liable to be calculated towards his qualifying service for grant of financial up gradation under ACP Scheme. The ACP Scheme came into force in the year 1999. In the scheme there is no bar for computation of temporary period of service for grant of financial up gradation, rather certain categories of employees such as Casual Employees (including those with temporary status), substitute, adhoc and Contract Employees shall not qualify for benefit under the ACP Scheme.

It is the contention of the Applicant that similarly situated person namely Chittaranjan Mohanty filed OA No. 192/2010 with prayer to quash the order of rejection and to direct the Respondents to compute the temporary period of service as qualifying service for grant of 1st financial up gradation under ACP Scheme. This Tribunal vide order dated 22.3.2012 quashed the order of rejection and directed the Respondents to compute the temporary period of service for ~~other~~ the purpose of grant of ACP. The Railway Authorities challenged the said

order before the Hon'ble High Court of Orissa in WP (C) No. 12425 of 2012. The Hon'ble High Court of Orissa dismissed the said Writ Petition vide order dated 6.2.2013 thereby upholding the order of this Tribunal. The instant case is covered by the case of Chittaranjan Mohanty as on completion of one year temporary service he was granted the pay scale with annual increments and consequently his service was regularized in the grade of Fitter Grade III vide order dated 4.6.1997. He has completed 12 years of qualifying service without any promotion and as such though he was entitled for grant of first financial up gradation under ACP w.e.f. 5.4.2000 the same was not granted to him despite representation dated 14.2.2013 followed by reminder dated 24.8.2013. Hence by filing the instant OA he has prayed for direction to the Respondents to grant 1st financial up-gradation w.e.f. 5.4.2000 in scale of Rs.4000-6000/- by extending the benefit of the order dated 22.3.2012 passed in OA No. 192 of 2010 and pay him the differential arrears.

2. We have heard Sri N.R. Routray, Ld. Counsel appearing for the applicant and Sri T. Rath, Learned Standing Counsel appearing for the Respondent-Railway and perused the records.

3. It is the positive case of the Applicant that as per the decision of this Tribunal upheld by the Hon'ble High Court of Orissa in the case

of Chittaranjan Mohanty he is entitled to first financial up gradation under the ACP scheme w.e.f. 5.4.2000. As such after the order of the Hon'ble High Court dated 6.2.2013 by making representation dated 14.2.2013 followed by reminder dated 24.8.2013 the applicant has prayed for antedating the date of conferment of first financial ACP and payment of arrears etc. But till date he has neither received the benefits nor has he been communicated any reply on the said representation by the Respondent No.3. On being asked, Mr.T.Rath, Learned Standing Counsel appearing for the Railway-Respondent has submitted that he has no immediate instruction about the representation dated 14.2.2013.

4. It is trite law that an established maxim "*boni judicis est lites dirimere, ne lis ex lite oritur, et interest reipublicae ut sint fines litium*", casts a duty upon court to bring litigation to an end or at least ensure that if possible, no further litigation arises from the cases pending before the court in accordance with law. This doctrine would be applicable with greater emphasis where the judgment of the court has attained finality before the highest court. All other Courts should decide similar cases particularly covered cases, expeditiously and in consonance with the law of precedents [Ref. **Special Land Acquisition Officer Vrs Karigowda and Others,** (2010) 5 SCC 708].

5. On the other hand Section 19 of the Administrative Tribunals Act, 1985 provides as under:-

> "**19. Applications to Tribunals**.-(1) Subject to the other provisions of this Act, a person aggrieved by **any order** pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievances.
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> EXPLANATION.- For the purposes of this sub-section, "**order**" means an order made -
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> (a)by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any Corporation [or Society] owned or controlled by the Government; or
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> (b) by an officer, committee or other body or agency of the Government or a local or other authority or Corporation [or Society] referred to in Clause (a)."

6. No specific order has been challenged by the Applicant in this OA and it is the specific case of the applicant that no order has been passed on his representation which he has submitted before the Respondent No.3. However, keeping in mind the law laid down by the Hon'ble Apex Court in the case Karigowda (supra), without expressing any opinion on the merit of this matter, as agreed to by the Learned Counsel for the Applicant, this OA is disposed of at this admission stage with direction to the Respondent No.3 to consider and dispose of the representation dated 14.2.2013 (if it is received) and communicate the decision in a well-reasoned order to the Applicant within a period of

60(sixty) days from the date of receipt of copy of this order. It is also made clear that in the event it is decided that the applicant is entitle to any of the benefits as claimed in the representation the same should be paid to him within another period of 90(ninety) days from the date of receipt of the order of the competent authority. In case any decision has already been taken in the meantime on the representation but the result has not been communicated to the applicant the same be communicated to him within a period of 15(fifteen) days from the date of receipt of copy of this order. There shall be no order as to costs.

7. As prayed for by Mr.N.R.Routray, Learned Counsel for the Applicant, copy of this order along with OA be sent to Respondents 2 and 3 by speed post at the cost of the applicant; for which learned counsel for the applicant undertakes to file postal requisite in the registry within two days hence.

(R.C. MISRA)
Member (Admn.)

(A.K. PATNAIK)
Member(Judl.)