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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. No. 614 of 2013
Cuttack the 10th day of September, 2013

CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R. C. MISRA, MEMBER (A)

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Nityananda Behera, aged about 61 years, Son of Late Bhajahari Behera retired Cabin Master under Station Superintendent/East Coast Railway/JRZ, Permanent resident of Village/Post-Baralpokhari, PS-Bhadrak (T), Dist. Bhadrak, Odisha.

...Applicant

(Advocates: M/s-N.R.Routray, Smt.J.Pradhan, 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. Senior Divisional Personnel Officer/ East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.
3. Senior Divisional Operating Manager/East Coast Railway,/ Khurda Road Division, At/Po.Jatni, Dist. Khurda.
4. Senior Divisional Financial Manager/E.Co.Rly, Khurda Road Division, At/Po.Jatni, Dist. Khurda.

... Respondents

(Advocate: Mr. T.Rath)

ORDER

A.K.PATNAIK, MEMBER(J)

The case of the applicant is that on 1.5.1983 he was appointed in S.E.Railway. Thereafter on 19.7.1998 he has got his second promotion from the post of Senior TP to Switch Man/Cabinman. On 1.9.2008 Railway Board issued



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modified ACP scheme for grant of 1st, 2nd and 3rd financial up gradation on completion of 10, 20 and 30 years of regular service without any promotion. On 10.11.2009 vide RBE No.217/2009 the Railway Board issued clarification. The Applicant retired from service on attaining the age of superannuation w.e.f. 31.3.2013 and as per the MACP scheme he was entitled to third financial up gradation under MACP scheme w.e.f. 1.9.2008 in PB I (Rs.5200-20200/- with GP of Rs.2800/-) and consequential differential arrear salary, DCRG, commuted value of pension and arrear pension etc. It is the case of the Applicant that as the said benefit could not be granted by the Respondents he was deprived of getting retirement benefits at higher rates and it has further been alleged that by submitting representation dated 22.2.2013 he has prayed for granting him the third financial up gradation under MACP and fixation/re fixation of his pay, pension and payment of arrears till date ^{but} he has not been communicated any reply by the Respondents. In the above context by filing the present OA he has prayed to direct the Respondents to grant him the 3rd financial up gradation under MACP w.e.f. 1.9.2008 in PB I of Rs.5200-20200/- with GP of Rs.2800/- and pay him the differential arrear salary, leave salary, DCRG, commuted value of pension and pension with 12% interest for the delayed period of payment.

2. Copy of this OA has been served on Mr.T.Rath, Learned Standing Counsel for the Railway. We have heard Mr.N.R.Routray, Learned Counsel appearing for the Applicant and Mr.T.Rath, Learned Standing Counsel appearing for the Respondents. Mr.Rath, Learned Standing Counsel appearing for the



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Respondents at the outset objected to the maintainability of this OA on the ground that no explanation has been offered by the applicant for the delay and laches by stating that if the applicant was entitled to the 3rd financial up gradation under MACP w.e.f. 1.9.2008 why he did not take any action till 22.2.2013 i.e. the date when the applicant submitted representation. However, Mr.Rath has fairly expressed his inability to apprise the up-to-date status on the said representation in absence of instruction being obtained from the Department.

3. We find that no order has been challenged by the Applicant in this OA. 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.

EXPLANATION.- For the purposes of this sub-section, “**order**” means an order made -

- (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
- (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).”

4. In view of the above as no order has been challenged by the Applicant in this OA, we are not inclined to admit this OA. However, considering the fact that the applicant is a retired employee and the matter relates to payment of pension and pensionary dues, as prayed for by Mr.Routray, Learned Counsel for the Applicant, without prejudice to the rival claim of the parties and without expressing any opinion on the merit of the matter, this OA is disposed of at this


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admission stage with direction to the Respondent No. 3 i.e. Senior Divisional Operating Manage, ECoRly, KUR, Jatni, KUR to consider and dispose of the representation dated 22.2.2013 (if the same has been received and is still pending for consideration) and communicate the result thereof to the Applicant in a reasoned/ speaking order within a period of 60(sixty) days from the date of receipt of copy of this order. In the event, upon such consideration, it is found that the applicant is entitled the benefit as claimed in the said representation, then the same may be paid to him, within a period of 90(ninety) days from the date of the order on his representation. In case the said representation has already been disposed of in the meantime but the decision has not been communicated to the applicant, the same may be communicated to the applicant within a period of 15 (fifteen) days from the date of receipt of copy of this order.

5. Copy of this order along with OA be sent to Resopndent Nos.2,3 and 4 at the cost of the Applicant for which Mr. Routray, Learned Counsel for the Applicant undertakes to furnish the postal requisite in the ^{registry} rejoinder by tomorrow/11.9.2013.

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(R.C.MISRA
Member(Admn.)


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