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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.921 OF 2013
Cuttack this the 22nd day of JUNE, 2017

Madan Charan Nayak. ...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

(R.C.MISRA)
MEMBER(A)

(A.K.PATNIK)
MEMBER(J)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

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HOH'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Madan Charan Nayak, aged about 52 years, S/o. late Bhaskar Charan Nayak, permanent resident of At-Sarada, PO-Mahana, Via-Rameswar, Dist-Cuttack at present working as a Fitter/MW, O/o. C.W.M./CRW/E.Co.Rly./Mancheswar, Bhubaneswar, Dist-Khurda, Odisha

....Applicant

By the Advocate(s)-M/s.N.R.Routray

Smt.J.Pradhan

T.K.Chaudhury

S.K.Mohanty

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, Rail Vihar, 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, E.Co.Rly., Mancheswar, Bhubaneswar, Dist-Khurda
4. Mr.S.K.Mishra, W.P.O., Carriage Repair Workshop, E.Co. Rly., Mancheswar, Bhubaneswar, Dist-Khurda

...Respondents

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

ORDER

R.C.MISRA, MEMBER(A):

Applicant is presently working as Fitter/MW under the Respondent-Railways. His grievance is directed against the order dated 24.10.2013(A/8), by virtue of which his request for

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grant of 1st financial benefit under the ACP Scheme with effect from 7.4.2000 has been rejected by the Railway Administration.

2. Shorn of unnecessary details, it would suffice to note that on being appointed, initially applicant joined as Fitter on 8.4.1988 in the Railways carrying the scale of Rs.950-1500/-, whereafter, he was sent for in-service training for a period of six months. After completion of training, he was allowed to enjoy the aforesaid scale of pay with usual allowances from time to time. However, vide order dated 20.09.1994 his service was regularized against the existing Skilled Grade-III. In the meantime, based on the recommendations of 5th CPC, Assured Career Progression(ACP) Scheme came into force to remove the genuine stagnation and hardships faced by the railway employees due to lack of adequate promotional avenues. The Scheme provided two financial upgradations to be made available only if no regular promotions during the prescribed periods of 12 and 24 years have been availed of by an employee. Grievance of the applicant is that since he was appointed as Skilled Artisan (Fitter) in the scale of Rs.950-1500/- on 8.4.1988, the respondent-railways, ought to have reckoned 12 years regular service from that date for the purpose of 1st financial upgradation under the ACP Scheme, instead, they have granted the said benefits with effect from 20.09.2006, having taken into account the 12 years regular service from 19.04.1994. In support of his case, applicant has

relied on the decision of this Bench in O.A.No.192 of 2010 disposed of on 22.3.2012 in which the Tribunal had directed the railway authorities to count the period of service from 29.3.1988 for the purpose of grant of ACP. Hence, the applicant in the instant O.A. has sought for the following relief.

- i) To quash the order of rejection dated 24.10.2013 under Annexure-A/8.
- ii) To direct the Respondents to grant 1st financial upgradation w.e.f. 07.04.2000 and pay the differential arrear salary with 12% interest by refixing his pay in the scale of Rs.4000-6000/- by extending benefits of order under Annexure-A/3 and A/4.
- iii) To direct the Respondent No.4 to pay compensation of Rs.20,000/-.

3. Per contra, respondents have filed their counter. According to respondents, applicant had been appointed as trainee Artisan with stipendiary pay on 8.4.1988 and he was regularized against the working post with effect from 20.09.1994. The period from 08.04.1988 to 19.09.1994 was treated as training as there was no scope at all to regularize him in service in the absence of regular working post. According to respondents, as per extant rules, regular service of 12 years, i.e., from 20.09.1994 was taken into account for granting 1st financial upgradation under the ACP Scheme. It has been submitted that since the applicant had not completed 12 years regular service as on 07.04.2000, he was not eligible for grant of 1st financial upgradation under the ACP Scheme.

4. We have heard the learned counsel for both the sides and perused the records. We have also gone through the rejoinder filed by the applicant as well as the written notes of submission filed by both the sides.

5. The sum and substance of the dispute in the instant O.A., as it appears, is whether the period spent on training should be considered as regular service for the purpose of grant of 1st financial benefits under the ACP Scheme. In this connection, it is to be noted that this point is no longer *res integra* in view of the decision of this Tribunal in O.A.No.192 of 2010 (C.R.Mohanty vs. UOI & Ors.) in which the Tribunal held that the training period shall be counted for the purpose of 1st financial upgradation under the ACP Scheme. Needless to mention is it that the decision in C.R.Mohanty's case was the subject matter of challenge before the Hon'ble High Court of Orissa in W.P.C.No.12425 of 2012. The Hon'ble High Court, vide judgment and order dated 6.2.2013 while dismissing the aforesaid Writ Petition, held as under.

"On perusal of clause 5.2 of the ACP Scheme, we find that residency periods (regular service) for grant of benefits under the ACP Scheme shall be counted from the grade in which an employee was appointed as a direct recruit. It is needless to say that the employees on being appointed as direct recruits were sent for training. Therefore, the period for which the opposite party was under training has to be calculated for the purpose of grant of ACP. We find no error to have been committed by the learned Tribunal in passing the impugned order. The writ petition, therefore, being devoid of merit, is dismissed".

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6. Upon perusal of records, we have no iota of doubt in our mind that the facts as set out in O.A.No.192 of 2010, are quite similar to the facts of the case in hand. In view of this, we are not inclined to take a divergent view from the view already taken by this Tribunal and upheld by the Hon'ble High Court under similar circumstances.

7. For the reasons aforesaid, we quash and set aside the impugned order dated 24.10.2013(A/8) and direct the respondent-railways to reckon the period spent on training for the purpose of grant 1st financial upgradation under the ACP Scheme and accordingly, extend the same benefit in favour of the applicant with effect from 07.04.2000 by granting differential arrears as due and admissible. This exercise, the respondents shall complete within a period of four months from the date of receipt of this order.

8. In the result, the O.A. is allowed as above, with no order as to costs.

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

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(A.K.PATNIK)
MEMBER(J)

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