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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 244/2014
this the 30th day of January, 2017

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

Prafulla Kumar Rout aged about 52 years, S/o Shri Purusottam Rout permanent resident of Pokharipada, PO Chatua, Kujang, District Jagatsinghpur, at present working as Technician Grade-II (Welder) O/O CWM/CRW/E.Co. Rly., Mancheswar, Bhubaneswar, District Khurda. ...Applicant

By the Advocate : Shri N.R.Routray
-VERSUS-

1-Union of India represented through the General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, District Khurda.
2-Chief Workshop Manager, Carriage Repair Workshop, East Coast Railway, Mancheswar, Bhubaneswar, District Khurda.
3-Workshop Personnel Officer, Carriage Repair Workshop, E.Co.Rly., Mancheswar, Bhubaneswar, District Khurda.
4-Mr. S.K.Mishra, WPO, Carriage Repair Workshop, E.Co.Railway, Mancheswar, Bhubaneswar, District-KhurdaRespondents

By the Advocate : Shri B.B.Patnaik

O R D E R

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

The applicant is a Railway employee at present working as Technician Grade-II (Welder) in the East Coast Railways, and has come to this Tribunal making the following prayer :

"a) To quash the order of rejection dated 24.03.2014 under Annexure A-7.

b) And to direct the Respondents to grant 1st financial upgradation w.e.f. 28.03.2000 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 & A/4."

2. The facts of this O.A. are that the applicant was appointed on 29.3.1988 as a Welder in the scale of Rs. 950-1500 and thereafter was sent for in-service training. He was regularized by order dated 3.9.1991 against the existing post of Welder.

Since his date of appointment was 29.3.1988, he should have been considered to have completed 12 years of regular service as on 28.3.2000. In the meantime, the Assured Career Progression Scheme (ACP) was implemented and given effect to from 1.10.1999. The Scheme provided for sanction of two financial upgradations at the end of 12 and 24 years of regular service in the absence of regular promotions during the prescribed periods. The grievance of the applicant was that in his case, he was entitled to award of first financial upgradation on 28.3.2000, but the respondents did not consider his case. The applicant's period of service from his date of appointment to the date of regularization was not considered as qualifying period for grant of ACP, by the respondents. There were similarly circumstanced employees having the same grievance. One of them filed O.A. No. 192/2010 in the Tribunal ventilating his grievance. The Tribunal disposed of the matter by an order dated 22.3.2012, and allowed the case of the applicant, by taking a view that period of training would be reckonable qualifying service, since the period was treated as duty, and pay has been refixed allowing annual increments, though on a notional basis. The Railways took the matter to the Hon'ble High Court by filing Writ Petition (C) No. **12425/2012**. The Hon'ble High Court did not find any error in the orders of the Tribunal, and dismissed the Writ Petition by an order dated 6.2.2013. The Railways further challenged the order by filing SLP No. **11040/2013** before the Hon'ble Supreme Court. But the Apex Court did not find any reason to interfere with the impugned order, and thus the SLP was dismissed. The concerned employee Sh. C.R. Mohanty was therefore sanctioned 1st financial upgradation in the scale of Rs. 4000-6000 retrospectively w.e.f. 29.3.2000 under the ACP Scheme.

[Signature]

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3. The applicant in this O.A., claiming to be similarly circumstanced as the said Sh. C.R. Mohanty, filed a representation dated 10.3.2014 to the respondents, for grant of same benefits. The respondents disposed of the representation by a detailed speaking order dated 24.3.2014 and rejected the prayer of the applicant. The grounds on which the prayer of the applicant was rejected can be touched upon here. The applicant had joined as a Trainee Artisan accepting certain terms and conditions which included that his regularization would be subject to availability of working post. His period of training was extended due to non-availability of working post, and eventually he was regularized w.e.f. 3.9.1991, after working post was located. The period from 29.3.1988 to 2.9.1991 being period of training with stipendiary pay could not be viewed as regular qualifying period of service. Under the ACP Scheme, only regular period of service would be treated as qualifying period, and temporary or ad hoc period of service would be excluded from consideration. Regular period of service was counted from 3.9.1991, and on completion of 12 years of such qualifying service, 1st ACP was granted from 2.9.2003. The other ground is that even though the said Sh. C.R. Mohanty was granted 1st financial upgradation on completion of 12 years period from the date of appointment, because of the verdict of the Courts, this relief is personal to that employee, and Railways would not make a precedent out of it, by extending similar benefit to present applicant.

4. The respondents in their counter-affidavit have given the details of the factual aspect of the matter which need not be repeated. But they have raised the same objections to the prayer of applicant, as given in the impugned order dated 24.3.2014, which in the previous para has been discussed. The respondents



have further alleged that applicant along with 136 trainee artisans had earlier filed OA No. 427/1989 praying for regularization. The Tribunal had directed for regularization against regular posts of Artisan Gr. III. The order of Tribunal was confirmed by the Hon'ble Apex Court. Subsequently, applicant was regularized and his 1st financial upgradation was granted from 2.9.2003. The applicant has no locus standi to approach the Tribunal on the same prayer for regularization. On the basis of orders passed in respect of Sh. C.R. Mohanty which are treated ^{as} personal to his case, by way of implementing orders of the Court, the applicant may not be allowed similar relief.

5. The applicant has filed a rejoinder, and mainly relied upon the decision of the Hon'ble Apex Court in the case of ***Sub Inspector Roop Lal Vs. Lt. Governor*** [2000 SCC (L&S) 213], and in ***Official Liquidator Vs. Dayanand & Ors.*** [2009 (1) SCC (L&S) 943], laying down the law that decision of co-ordinate Bench should be followed to maintain judicial discipline.

6. Having perused the records, we have heard learned counsels from both sides, and carefully considered the matter.

The substantive issue for determination of the case is whether the period of training would be treated as qualifying period of service for the purpose of consideration of ACP. In OA No. 192 of 2010, the issue was decided in favour of the applicant, and respondents were directed to count the period of service during training towards qualifying period. This order was upheld by the Hon'ble High Court and the Hon'ble Apex Court, and similarly placed employee Sh. C.R. Mohanty has been given the relief. The matter is no longer res integra. In OA No. 90 of 2014 and O.A. No. 801 of 2013, similarly placed employees were granted relief. Against this factual matrix, applicant in the present OA



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makes a claim of being given similar relief, by invoking the principle that similarly placed employees should be dispensed similar relief. It also appears that orders in OA No. 427 of 1989, filed by this applicant along with 136 persons, do not create any legal hindrance to the raising of these claims by the applicant in the present case. We need to therefore refer to the judgment of the Hon'ble Apex Court on this issue to seek further light as to how to proceed in the matter.

7. In the case of ***State of Karnataka Vs. C. Lalitha*** (2006) 2 SCC 747, the Hon'ble Apex Court at Para 29 of the judgment, observed as follows :-

"Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the Court that would not mean that persons similarly situated should be treated differently."

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 Hon'ble Apex Court made the following observations :

"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 in the filing of the applications and the appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal."

The Hon'ble Apex Court reiterated the law in this matter in the matter of ***State of UP & Ors. Vs. Arvind Kumar Srivastava & Ors.*** reported in [2015 SCC (L&S) 191], by making following observations :

"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 the Article 14 of the Constitution of India. This principle needs to be applied to service matters more emphatically as the service jurisprudence evolved by the Court from time to time postulates

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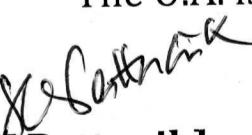
that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are to be treated differently."

8. We have also taken note of the decisions of the Hon'ble Apex Court in ***Sub Inspector Roopal Vs. Lt. Governor*** (2000 SCC (L&S) 213) and in ***Official Liquidator Vs. Dayanand & Ors.*** [2009(1)SCC (L&S)943]. The decision of the Tribunal in OA No. 192/2010, involving similarly placed applicant, and same set of issues, has been upheld by the Hon'ble High Court, and the Hon'ble Apex Court, and therefore, has reached its finality. The respondents have implemented the orders of the Court and conferred the benefits on similarly placed employees. The precedent decision is binding, and if a different view is taken, a reference to a larger Bench has to be made. We, however, do not find any issue whereon we could take a divergent view, and therefore, we would follow the judicial precedent in resolving the issues.

9. We, therefore, decide the issue in favour of the applicant and order as follows :

- a) The order dated 24.3.2014 is quashed and set aside.
- b) The respondents are directed to reconsider the matter of 1st financial upgradation by treating the period from 29.3.1988 to 2.9.1991 as qualifying service, i.e., with effect from 28.3.2000.
- c) The Pay may accordingly be re-fixed and financial benefits as per entitlement may be disbursed within a period of 90 (ninety) days from receipt of a copy of order.

10. The O.A. is thus allowed as above, with no order as to costs.


[S.K.Pattnaik]
Member (J)


[R.C.Misra]
Member (A)