

JK

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No. 260/00320 of 2014

Cuttack, this the 4th day of Jan., 2017

P.K. Jena Applicant

-Versus-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be referred to PB for circulation?

S.K.Pattnaik
(S.K.PATTNAIK)
MEMBER (J)

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

8

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00320 OF 2014

Cuttack, this the 4th day of Jan. 2017

CORAM

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

.....

Prasan Kumar Jena, aged about years, Son of Late Braja Kishore Jena, T. No./C. No. 0522, At/P.O- Akhuapada, Dist.- Bhadrak, at present working as SMW, O/O. C. W. M/CRW/E. Co. Rly., Mancheswar, Bhubaneswar, Dist-Khurda.

...Applicant
(By the Advocate-M/s. N. R. Routray, Smt. J. Pradhan, T. K. Choudhury, S. K. Mohanty)

-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

By the Advocate- (Mr. S. Rajaguru)

ORDER

R. C. MISRA, MEMBER (A):

The applicant in the present O.A is an employee of the East Coast Railways and has approached this Tribunal praying for the following relief:-

“a. To quash the order of rejection dated 28.03.2014 under Annexure-A/7;

b. And to direct the Respondents to grant 1st financial up-gradation w.e.f. 28.03.2000 and pay the differential arrear salary with 12% interest by re-fixing his pay in the scale of Rs.4000-6000/- by extending benefits of order under Annexure-A/3 & A/4;
And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice;
And for which act of your kindness the applicant as in duty bound shall ever pray.”

2. The facts of the case are that the applicant was appointed on 29.03.1988 as a SMW in the Scale of Rs.950-1500/. He was sent for in service training for a period of six months. However, the period of training was extended and he was finally regularized in the post of SMW on 03.09.1991. During the

Ranjan

period of training he was allowed the regular scale of pay and the increments without any break as attached to the post. The Govt. of India introduced ACP Scheme basing on the recommendation of the 5th Central Pay Commission in order to tackle the problem of stagnation for the Central Govt. Civilian employees. The Scheme provided for two up-gradations at the end of 12 & 24 years in the absence of regular promotion in the cadre. The applicant claims to have been appointed on 29.03.1988 against regular vacancy for which he was sent for in service training. However, the applicant's case was not referred to the Screening Committee for consideration of grant of 1st Financial up-gradation even though on 28.03.2000 he had completed 12 years of qualifying service. In the meantime, similarly placed employees approached the Tribunal by filing OA No. 192/2010 and the Tribunal disposed of the O.A. by an order dated 22.03.2012 in which it was decided that the period spent by the applicant as a Trainee Artisan has to be reckoned for the purpose of ACP. This order of this Tribunal was challenged by the Railway Authority before the Hon'ble High Court of Orissa by filing W.P.(C) No.12425/2012. The Hon'ble High Court in order dated 06.02.2013 sustained the orders of the Tribunal by directing that the period for which these employees were under training has to be calculated for the purpose of grant of ACP. Even though the Respondents/Railways challenged this order before the Hon'ble Apex Court by filing SLP No.11040/2013, the Hon'ble Apex Court also confirmed the order of Hon'ble High Court of Orissa. The matter was thus finally decided in favour of the applicant in O.A. No.192/2010. In view of this situation, the applicant of this O.A. filed a representation to Respondent No.3 on 14.03.2014 making a prayer that similar benefits may be accorded to him and he may be granted the 1st Financial up-gradation under the ACP Scheme w.e.f. 28.03.2000. This representation was rejected by the respondents on 28.03.2014 by deciding that the prayer of the

applicant was not sustainable. A copy of this order is annexed at Annexure-A/7 of this O.A. and is the subject of challenge herein.

3. The most important ground on which the applicant has prayed for the relief is that the law in this matter has been settled finally in the case of the applicants in O.A. No.192/2010 after the Hon'ble Apex Court confirmed the orders of the Hon'ble High Court as well as the Tribunal. The principle that has been decided is that the period of training has to be reckoned for the purpose of sanction of 1st financial up-gradation under ACP Scheme. This judgment is not a judgment in personem but a judgment in rem and, therefore, the Respondents are wholly unjustified by not extending the same benefit to the applicant of this O.A. even though it is quite clear that he is similarly placed.

4. The respondents by filing a counter affidavit have submitted that the applicant was appointed as a Trainee Skilled Artisan on 29.03.1988 with stipendiary pay of Rs.950 per month plus allowances as admissible. After successful completion of training he was regularized against the post w.e.f. 03.09.1991. It was clear from the terms of appointment that he had no right of being posted to a regular post and this would be considered after successful completion of the training period. The applicant along with 136 Trainee Artisans had filed O.A. No.427/89 before the Tribunal seeking a direction to be given to Respondents to regularize the applicant against the available posts. The Tribunal by an order dated 16.10.1990 directed the Respondents to complete the period of regularization within a period of three months. Since the applicant in this case was regularly appointed on 03.09.1991, on completion of 12 years of regular service he was granted the 1st ACP Scheme on 03.09.2003 in the scale of Rs.4000-6000/-. It is admitted in the counter affidavit that the applicant of O.A. No.192/2010 one Sri Chittaranjan Mohanty is similarly placed. In view of the

orders of the Tribunal which were later supported by the decision of the Hon'ble High Court as well as the Hon'ble Apex Court, the Railway authorities decided to implement the order by granting the 1st financial up-gradation retrospectively to Sri Chittaranjan Mohanty, but it was specifically mentioned in the said order that this shall not be quoted as precedent in other cases.

5. The applicant has filed a rejoinder in which he has made mention of a number of decisions of the Hon'ble Apex Court in order to drive home his point that similarly placed persons should be extended the same benefit when this has been granted to another employee and that similarly placed persons need not approach the Court of law in order to assert their right to be treated similarly. The argument of the Ld. Counsel for the applicant is that refusal of such benefits to the present applicant by the Respondents by mentioning that the benefit as given to one Sri Chittaranjan Mohanty the applicant in O.A. No.192/2010 cannot be cited as precedent in other case is not sustainable in the eye of law.

6. Having heard Ld. Counsel of both parties, we have perused the records.

7. The principal issue for resolution is whether a benefit which has been extended to a particular employee after the matter was finally decided can be denied to other similarly placed persons and if so, whether it is tenable in law.

The other issue for discussion is whether the period of training can be treated as qualifying period of service for the purpose of consideration of ACP.

8. The issue was addressed earlier in O.A. No.192/2010 and was decided in favour of the applicant in that O.A. The Tribunal had directed the Respondents to count the period of service from the date of his initial appointment for the purpose of grant of ACP Scheme. This order was upheld by the Hon'ble High Court of Orissa and later by the Hon'ble Apex Court. Therefore, this point has



reached its finality and benefits have been awarded to the applicant in O.A. No.192/2010. Similarly placed persons also approached this Tribunal by filing O.A. Nos.90/2014 and 801/2013. The Tribunal disposed of these O.As also on the same lines by relying on the decision in the O.A. No.192/2010.

9. Similarly placed employees should be similarly treated in terms of conferment of benefits as has been emphasized by the Hon'ble Apex Court in various decisions. In this regard, we place reliance on the decisions in Inderpal Yadav Vs. Union of India (1985) 2 SCC 648, K.C. Sharma Vs. Union of India(1997) 6 SCC 721, State of Karnataka Vs. .C. Lalitha (2006) 2 SCC 747, Krishna Bhatt Vs. State of J & K, and State of UP & Others Vs. Aravind Kumar Srivastava & Others. In the matter of State of UP & Others Vs. Arvind Kumar Srivastava reported in (2015) 1 SCC(L&S), 191, the Hon'ble Apex Court has made the following observation which is found to be pertinent to the present case.

“Para 22.1. 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 Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically, as the service jurisprudence evolved by this court from time to time postulates 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 not to be treated differently.”

10. In view of the preceding discussion of the facts, and also the law as laid down by the Hon'ble Apex Court in several decisions, we are of the opinion that there are no grounds for making any discrimination against the applicant since respondents have extended the benefit of ACP to similarly placed employees. Therefore, the period of training has to be reckoned as qualifying period of service for sanction of 1st ACP as has been held by the Tribunal in several OAs. It is to be noted that equality and fairness demand that the same principle should

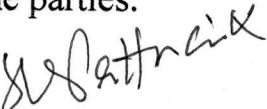


govern the decision in the present case and in our considered view, that also will be in consonance with judicial discipline, which has been emphasized in the decision of the Apex Court in the matter of SI Rooplal Vs. Lt. Governor ~~as quoted in this~~ ^{Q.} order(Supra).

11. Accordingly, we answer the point that a benefit which has been extended to a particular employee after the matter was finally decided has to be extended to similarly placed persons.

12. In view of the discussions made above, we find justification in the prayer of the applicant that he should be granted the 1st financial up-gradation under ACP Scheme by treating the period of training as qualifying service w.e.f. 28.03.2000 on completion of 12 years of regular service subject to fulfillments of other conditions as per the rules. We therefore, quash the order dated 28.03.2014 passed by respondents at Annexure-A/7 and direct the respondents to confer the benefits as aforesaid ^{on} ~~to~~ the applicant within a period of 90 days of receiving a copy of this order.

13. The O.A. is thus allowed to the extent mentioned above, with no cost to the parties.


(S.K.PATTNAIK)
MEMBER (J)


(R.C.MISRA)
MEMBER(A)