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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
O.A. No. 260/00638/2014
CORAM
HON'BLE SHRI R.C.MISRA, MEMBER(A)
HON'BLE SHRI S.K.PATTNAIK, MEMBER (J)**

[Date of Reserve : 22nd Sept., 2016]

[Date of Order : 31st January, 2017]

Hira Behera aged about 62 years widow of late Shri Chakara S/o Late Shri Kanhu, Ex. Technician Grade-III , Engineering (Con.)/East Coast Railway, Khurda Road, permanent resident of Vill.-Godipatia, PO Saragada Makundapur, PS Dharmasala, District Jajpur.

...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, Chandrasekharapur, Bhubaneswar, District Khurda.

2-Senior Personnel Officer, Construction/Coordination, East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, District Khurda.

3-Deputy Chief Engineer, Construction, East Coast Railway, Khurda Road at present Rail Vihar, Chandrasekharapur, District Khurda.

...Respondents

By the Advocate : Shri B.B.Patnaik

O R D E R

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

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

"a) To quash the order of rejection dated 28.07.2014 under Annex.A/9.

b) And to direct the Respondents to grant 1st financial upgradation under ACP Scheme w.e.f. 01.10.1999 in scale of Rs. 4000-6000 in favour of the husband of the applicant by extending benefits of order dated 05.03.2008 passed in O.A.No. 858/2005 under Annex.A/4 and

c) And to direct the respondents to pay the differential arrear salary, leave salary, DCRG, commutation and pension by fixing the pay in PB-1 with GP of Rs. 2400/- with 12% interest for the delayed period of payment."

2. The brief facts are that husband of applicant viz., Chakara S/o Kanhu was granted temporary status w.e.f. 1.1.1981 as a



Technician Gr.III and his services for first time were regularized retrospectively w.e.f. 1.4.1988 as Technician Grade-III ~~retrospectively~~ vide order dated 16.7.1992 and, for the second time w.e.f. 1.3.1998 vide order dated 7.6.1999 in scale Rs.3050-4590 vide Annex.A/1. The Fifth Central Pay Commission in its report had made certain recommendations relating to Assured Career Progression (ACP) Scheme for Central Government Civilian employees in all Ministries / Departments as safety net to deal with problems of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues.

3. As per para 4 of the Scheme (Annex.A/2), the first financial upgradation under the ACP Scheme, shall be allowed after 12 years and second upgradation after 12 years of regular service from the date of first financial upgradation subject to fulfillment of prescribed conditions. In other words, if the first upgradation gets postponed on account of employee not found fit or due to departmental proceedings etc. this would have consequential effect on second up-gradation which would also get deferred accordingly. In its Para 5.1 it is contended that two financial upgradations under the ACP scheme in the entire Railway service career of an employee shall be counted against regular promotions (including in-situ promotion and / or any other promotion including fast track promotion availed through limited departmental competitive examinations) availed in the grade in which he was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for second financial upgradation only, on completion of 24 years of regular



service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no further benefit under the ACP Scheme shall accrue to him.


4. The Screening Committee which was conducted on 15.9.2003 for grant of financial upgradation under ACP Scheme found other similarly placed persons of order dated 7.6.1999 suitable for grant of 1st financial up-gradation w.e.f. 1.4.2000. The Chief Engineer (Con.) approved recommendation of the screening committee for grant of 1st financial upgradation. Thereafter, respondent No. 2 vide its order dated 22.6.2005 cancelled the order dated 8.10.2003 granting 1st financial upgradation and ordered recovery after refixing pay in scale Rs. 3050-4590. The said respondent had taken a ground that the beneficiaries have not completed 24 years of regular service from the date of their initial regularization which is a mandatory condition prescribed for granting 2nd financial upgradation under the ACP Scheme in terms of Estt. Sl. No. 288/99 and in Note No. 2, it is also stated that order of cancellation of 2nd financial upgradation, shall have consequential effect. Challenging the order of cancellation of financial upgradation under ACP Scheme dated 22.6.2005 other similarly placed persons who have not been granted the benefit of financial upgradation, approached this Tribunal by way of filing OA Nos. 660, 663 and 740 of 2007, 185/2007 and 858/2008 etc. This Tribunal quashed the order of cancellation dated 22.6.2005 by directing respondents to restore 1st financial upgradation under the Scheme.

5. Further, this Tribunal vide its order dated 5.3.2008 disposed of OA No. 858/2005 in favour of Tipa, Son of Nidhi and directed for grant of 1st financial upgradation under ACP Scheme w.e.f. 1.10.1999. The respondents challenged the said order of

5.3.2008 before the Hon'ble Odisha High Court in D.B. (Civil) W.P. (C) No. 13046/2008, which was dismissed by order dated 27.1.2009. The husband of the applicant retired from service w.e.f. 31.5.2007. At the time of superannuation, respondents issued a PPO and paid retiral benefits in scale of Rs. 3050-4590. As per PPO, date of initial appointment is 1.1.1981 and date of retirement was 31.5.2007 and the total qualifying service was more than 22 years. The scale of Rs. 3050-4590 was revised to PB-I with Grade Pay of Rs. 1900/- by the 6th Pay Commission and accordingly, husband of applicant got the differential financial benefits.

Applicant's husband died on 5.2.2012. On 4.3.2014 and 7.7.2014 (Annexs. A -7 and 8) , his widow submitted a representation and, then a reminder to respondent No. 2 to grant 1st financial upgradation w.e.f. 1.10.1999 in the scale of Rs. 4000-6000 specifically mentioning therein that her husband was senior than one Sh. Tipa who had been granted 1st financial upgradation in view of order dated 5.3.2008 passed by this Tribunal in OA No. 858/2005. She has also requested respondent-authorities to grant 1st financial upgradation in favour of her deceased husband w.e.f. 1.10.1999 along with consequential benefits.

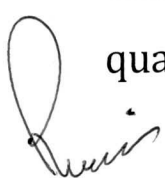
6. It is submitted that Hon'ble the Apex Court in the cases of ***B.N. Nagarajan & Ors. Vs. State of Mysore***, AIR 1966 SC 1942, ***Amritlal Giri Vs. Collector of Central Excise***, AIR 1975 SC 538 and ***K.I. Shephard Vs. UOI*** AIR 1988 SC 686, made a principle that similarly placed persons shall be entitled to same benefits and they should not be excluded only because they have not come to Court. Further, in view of the judgements in the case of ***Union of India & Ors. Vs. K.C. Sharma and Ors.*** reported in 1997 SCC Vol. 7, 721 and ***Maharaj Krishna Bhatt & Anr. Vs. State of J.K. & ors.***, reported in (2008) 2 SCC (L&S) 783, the Tribunal has powers



to condone the delay, if any, caused for filing OA while praying for extending similar benefits.

7. It is submitted that respondents rejected the claim of 1st financial upgradation on the ground that husband of the applicant has already been granted one regular promotion as Sarang Gr.III in the scale of Rs. 3050-4590 w.e.f. 1.3.1998 and not completed 24 years of qualifying service. It is the plea of applicant that the claim of Tipa (applicant of OA No. 858/2005) was also rejected on the same ground but in view of the order in the said case by the Tribunal and the Hon'ble High Court, respondents granted 1st financial upgradation to Sh. Tipa w.e.f. 1.10.2009.

8. A counter to the application has also been filed by respondents. It is pleaded that the husband of the applicant Sh. Chakara, retired Technician Gr.III, is not entitled to the financial upgradation under ACP Scheme. It is stated that deceased employee was granted temporary status from 1.1.1981 and thereafter, on 1.4.1988, he was regularized and period he has spent as ad hoc, will not qualify him for purpose of grant of ACP benefits. He was promoted on regular measure as Sarang Gr. III in scale of Rs. 3050-4590 from 1.3.1998. The applicant's husband was in A-3 medical category and had been retired from Railway Service on 31.5.2007 after completing 22 years 9 months and 14 days qualifying service duly taking into account the 50% of Temporary Status service period with last grade pay of Rs. 1900/-. In the present case, the late employee would have been entitled to the 1st financial upgradation on completion of 12 years of regular service and that to in the scale of pay of Rs. 2650-4000 and then to the scale of pay of Rs. 3050-4590 on completion of 24 years service. Whereas, if any employee has already got one promotion, he shall qualify for 2nd ACP on completion of 24 years of regular service



under the Scheme. However, Sh. Chakara having completed 12 years service on 15.8.1996 counting 50% of temporary status service with the account, he was not entitled for financial upgradation. Shri Chakara's service on regular measure in direct entry grade of PCR Group 'D' post in scale of Rs. 750-940 w.e.f. 1.4.1988 and from that grade he was assigned with one regular promotion as Sarang Grade III in scale of Rs. 3050-4590 from 1.3.1988 within the period of 12 years of service and retired on superannuation without completing total 24 years of regular service. As stated above, the husband of the applicant had rendered 22 years 9 months and 14 days qualifying service, therefore, he was not entitled for financial upgradation in scale of Rs. 4000-6000 as per the ACP Scheme. The respondents have submitted that besides that he was enjoying the scale of pay of Rs. 3050-4590 much prior to 1.10.1999 and acquired regular promotion as Sarang Gr. III from 1.3.1998 keeping his substantive in the scale of pay of Rs. 750-940 / 2550-3200 w.e.f. 1.4.1988 as well as regular post of Sarang Gr. III from 1.3.1998 he would be entitled only to the 2nd ACP benefit subject to completion of 24 years of service.

9. The respondents have further submitted in reply to para 4.4 that applicant mentioned that screening committee held on 15.9.2003 for grant of ACP benefit as per the Board's guidelines. On perusal of records, it is revealed that though the approval of CE/C/III/BBS was communicated vide letter dated 8.10.2003 about granting of ACP benefits to 53 candidates, whereas, the same was withdrawn subsequently for 40 candidates vide office order dated 22.6.2005. The reason for cancellation was that the incumbents had not completed 24 years of regular service from the date of their initial regularization. However, the said

withdrawal was not challenged by any of the candidates. But, few

of them filed OA Nos. 660/2005, 663/2005, 185/2007, 740/2005 and 858/2005. Since the applicants succeeded in their prayer before the Tribunal, the order of the Tribunal was complied with. It is contended that Annex.A/5 is a copy of PPO dated 7.6.2007 issued by the ADFM, Bhubaneswar at the time of retirement of the deceased employee. RBE No. 233/99 was issued by the Railway Board for granting ACP benefits, and ^{it is} that submitted that at the time of issuance of such circular, the deceased husband was in service and retired on 31.5.2007. The deceased husband never made any claim with respondent authorities up to 4.2.2012 i.e. till his death, claiming the benefits under ACP Scheme. All along, he kept silent even after retirement from 2007 to 2012 and as per records too, there was no such claim made by the deceased husband.

10. Applicant has filed a rejoinder reiterating his submissions. The applicant submitted that the deceased employee was granted temporary status as a Technician Gr.III w.e.f. 1.1.1981. While the husband of the applicant was working as a Sarang Grade III his service for the first time was regularized as a Skilled Sarang Gr.III w.e.f. 1.4.1988 in the scale of Rs. 750-940 and further regularized in the scale of Rs. 3050-4590 vide order dated 7.6.1999. Further, it is mentioned in the rejoinder that the service of the husband of the applicant was for the first time, regularized vide order dated 16.7.1992 w.e.f. 1.4.1988 as a Skilled Sarang Gr.III and he never received his pay in the scale of Rs. 750-940 at any point of time. The applicant contended that the initial entry of her husband in the Railway service was w.e.f. 1.1.1981 as a Skilled Sarang Gr.III / Technician Gr. III which is the substantive post. Further, he was enjoying the corresponding scale meant for his post during his service and without availing any regular promotion retired from service on attaining the age of superannuation. It is contended

that not only all the 40 candidates challenged the office order No. 85/2005 dated 22.6.2005 and restored back the financial upgradation but also others retired/in-service candidates like ~~that of~~ Sh. Tipa & Ors, also granted 1st financial upgradation under the ACP Scheme w.e.f. 1.10.1999 in view of the order passed by this Tribunal which was later upheld by the Hon'ble High Court of Odisha. The widow therefore, prayed for extending the benefit of order under Annex.A/4 by releasing 1st financial upgradation under the ACP scheme w.e.f. 1.10.1999.

11. Having heard the learned counsels for both sides, we have perused the records. The conditions for grant of benefits under the ACP Scheme lay down that two financial upgradations shall be available to the Railway employee only if no regular promotions during the prescribed periods, i.e., 12 years and 24 years have been availed by the employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service. In case two prior promotions have already been received by an employee, no benefit under the ACP Scheme shall accrue to him. From the impugned order dated 28.07.2014, it is revealed that the applicant of this O.A. was engaged on a daily wage basis on 4.8.1972, and was granted temporary status on 1.1.1981. Subsequently, he was regularized and absorbed against PCR Group 'D' posts w.e.f. 1.4.1998 and he was further promoted on a regular basis (Regularization in the higher grade of Group 'C' post as Sarang Grade-III) w.e.f. 1.3.1998. The applicant superannuated on 31.5.2007 after rendering 22 years 9 months and 14 days qualifying service, taking into account 50% of his temporary service. Since the applicant had not completed 24 years of qualifying service by the time he retired, it is evident that under

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the Rules, he is not entitled to 2nd financial upgradation. Therefore, the only point of determination is whether the respondents have taken the correct view by denying the applicant the first financial upgradation. In fact, the exact issue is whether the applicant has got one regular promotion which stands in the way of consideration of his case for grant of first financial upgradation. For the consideration of first financial consideration the regular period of service is relevant, and contractual and temporary period of service shall not be considered. In the case of applicant, regular service starts from 1.4.1988. Since there is no dispute about that position, we need to examine and decide whether his regularization in the higher grade Grade-'C' post as Sarang Grade-III w.e.f. 1.3.1998 would be considered as a promotion or not. The Office Order dated 7.6.1999 issued by office of the Chief Engineer (Con.) , S.E. Railway, which is annexed at A/1 of the OA, mentions as follows :-

"Having been passed the necessary trade test for the post of Sarang Gr. III in scale of Rs. 3050-4590 (RP'97) the following staff are regularized as Sarang Gr. III / Revetter Grade - III against the 60% PCR sanctions of CE / C / HQ / BBS Unit from the dates as mentioned against each".

Explicitly, this is not an order of promotion; it is on the other hand, an order of regularization. The applicant's name is shown against serial No. 68 of this order, and his date of regularization against the post of Sarang, Gr. III is indicated as 1.3.1998.

12. The submission of the learned counsel for applicant is that office order dated 7.6.1999 is not an order of promotion, but an order of regularization. He also submits that one Tipa, a similarly placed employee who is at Serial No. 69 of the order dated 7.6.1999, has been given the benefit of 1st financial upgradation, based upon the orders of the Tribunal dated 5.3.2008 in OA No. 858 of 2005. The orders of the Tribunal have been upheld by the

Hon'ble High Court. The issue is no longer res integra, and the present applicant who is the widow of late Railway employee being similarly placed may be given the same benefit as given to the said Tipa. Our attention is thus attracted to the common order dated 5.3.2008 passed in respect of OA Nos. 874, 857, 858, 859 of 2005 and 81 & 401 of 2006. The Tribunal in this order has made the following observation :

"On a thorough scrutiny of the service records no- where we noticed any such endorsement to the effect that the applicants have even been promoted to higher posts. No rules have been produced by the respondents showing that the posts in which they were regularized are the promotional posts from Group 'D'."

The Tribunal in course of adjudication of the matter has also noted the earlier decisions of the Tribunal in cases involving similar facts. The following conclusion was reached by the Tribunal in the common order dated 5.3.2008:

"9.As per the ACP Scheme one can be denied the benefits of upgradation of scale of pay after completion of 12 years, if he/she has been given regular promotion to next higher grade during the said 12 years. In the records, we do not find any iota of evidence that any of the applicants have ever been granted any promotion. Therefore, denial of first upgradation under ACP Scheme after completion of 12 years of service cannot be held to be in accordance with the Rules."

In the result, the Tribunal in their order dated 5.3.2008 in the previous batch of OAs decided on the same issue, have allowed the case of applicants, and directed Railway – respondents to confer the benefits of upgradation under ACP on completion of 12 years of service.

13. The next point for discussion is whether the applicant in the present OA would be entitled to the same benefits on the basis of the argument that he/she is similarly placed. Respondents have admitted that benefits have been extended to applicants of the previous OAs based upon the decision of the Tribunal. But they have contested the claim of the present applicant, by submitting that the present applicant is not covered under these orders. The applicant is the widow of the deceased Railway employee Chakara

who retired on 31.5.2007 and expired on 4.2.2012, and during his life time, he never raised or agitated his claim vis-à-vis Tipa, similarly placed person with regard to 1st financial upgradation. It is now the widow, the present applicant, who has brought up the claim on behalf of husband before the Tribunal. Such a claim should not be entertained, argue the respondents, in view of the silence and acquiescence of the deceased employee. Admittedly, there has been inaction on part of the Railway employee in raising his claim. Now, after his death on 5.2.2012, the widow has approached the Tribunal. The question is therefore whether limitation should stand in the way of adjudication of this claim. The facts indicate that the deceased Railway employee retired on 31.5.2007, and respondents granted 1st financial upgradation in the scale of Pay of Rs. 4000-6000 w.e.f. 1.10.1999 in favour of Tipa, as per the orders of the Tribunal in OA No. 858/2005, which were upheld by the Hon'ble High Court. He expired on 5.2.2012 and his widow submitted her representation on 4.3.2014. The respondents rejected the representation on 28.7.2014 which is under challenge in this O.A. Taking into account the overall circumstances of the case and also the fact that financial upgradation being related to fixation of pay, pension and family pension, and therefore being in the nature of a continuous cause of action, we are of the considered view that delay will not stand in the way of adjudication of the substantive issue involved in the matter.

14. Thus, we come to the issue whether being similarly placed, applicant would be entitled to the benefit awarded to other employee, i.e. one Tipa who had a similar service profile. The issue next to be decided is whether when an employee or a group of employees has been favoured with a relief under the orders of a Court, another employee will be entitled to receive the same

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benefit, even if he has not come before the Court. We have before us the decision of the Hon'ble Apex Court in the case of ***State of UP and Ors. Vs. Arvind Kumar Srivastava and Ors.*** reported in (2015) 1 SCC (L&S) 191, para 22.1 of which is quoted below :

"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 to service matters more emphatically as the service jurisprudence evolved by the 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."

15. In view of the above discussions, we are of the opinion that applicant's prayer is based upon sound facts and reasoning. We, therefore, quash the order dated 28.07.2014 (Annex.A/9) and direct the respondents to grant 1st financial upgradation under ACP Scheme on the same lines as granted to one Shri Tipa, similarly placed person, subject to rules as applicable to the case, after proper verification of the facts as claimed by applicant in the O.A. The orders may be complied with and, resultant financial benefits be conferred within a period of 90 days of receiving a copy of this order.

16. The O.A. is thus allowed to the extent mentioned above with no order as to costs.


(S.K.Pattnaik)
Member (J)


(R.C.Misra)
Member (A)