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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No. 260/00071 of 2014

Cuttack, this the 4th day of Jan 2017

B.B. MohantyApplicant

-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)
MEMBER (J)

(R.C.MISRA)
MEMBER(A)

I agree.
I authorize Hon'ble member
Mr R.C. Mishra to
pronounce the judgment
on our behalfs
S.K. Pattanaik
28/1/16

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00071 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)

.....

Bibhuti Bhusan Mohanty, aged about 53 years, Son of Bichitrananda Mohanty, permanent resident of At-Sreekrushna Vihar, P.O.-Jhinkiria, Via.- Bayalish Mouza, Dist.-Cuttack, at present working as a Welder Grade-II, Office of C. W. M/CRW/East Coast Railway/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.
4. Mr. S. K. Mishra, W.P.O., Carriage Repair Workshop, East Coast Railway, Mancheswar, Bhubaneswar, Dist- Khurda.

...Respondents

By the Advocate- (Mr. D. K. Behera)

ORDER

R. C. MISRA, MEMBER (A):

The applicant in the present O.A is working as a Welder Grade-II in the East Coast Railway he has approached this Tribunal praying for the following relief:-

- "a. To quash the order of rejection dated 09.01.2014 under Annexure-A/8;
 - b. And to direct the Respondents to grant 1st financial up-gradation w.e.f. 29.03.2000 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;
 - c. And to direct the Respondent No.4 to pay compensation of Rs.20,000/-
- 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."



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O.A.No.260/00071 of 2014
B.B. Mohanty -Vs- UOI

2. The short facts of the case are that the applicant was appointed as a *Skilled Artisan/ Welder Grade-III* in the scale of Rs.950-1500/- on 30.03.1988. He was sent for in-service training for a period of six months and during that period he was allowed to enjoy the scale of pay and the increments meant for that post without any break. After successful completion of training, his services were regularized w.e.f. 04.09.1997. Grievance of the applicant is with regard to the date of sanction of the 1st Financial up-gradation under ACP Scheme which was introduced on the recommendation of the 5th Central Pay Commission in order to tackle the problem of stagnation faced by the employees for lack of adequate promotional avenues. Under the ACP Scheme two financial up-gradations at the end of 12 & 24 years of regular service ^{to be} granted in the absence of regular promotion. The applicant claims that his date of appointment should have been taken as 30.03.1988 and that his case should have been referred to the Screening Committee for consideration of grant of 1st Financial up-gradation after completion of 12 years of qualifying service w.e.f. 29.03.2000. The applicant in this regard is relying upon the case of similarly placed employees who had 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. In view of the judgment of the Hon'ble High Court of Orissa the applicant claiming to be similarly placed made a representation on

14.02.2013 to Respondent No.3 praying for grant of 1st financial up-gradation w.e.f. 29.03.2000. In the meantime, the Respondents/Railways challenged the order of the Hon'ble High Court of Orissa 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. had filed a reminder representation to Respondent No.3 on 16.09.2013. Since there was inaction on the part of the Respondents in disposing of his representations, the applicant approached this Tribunal by filing O.A. No.713/13 and by an order dated 29.10.13, this Tribunal disposed of the said O.A. at the stage of admission with a direction to Respondent No.3 to consider the representation and communicate the decision in a well ^l and reasoned order to the applicant within a period of 90 days. In deference to the orders of the Tribunal, the respondents passed a speaking order dated 09.01.2014 in which the prayer of the applicant was rejected. Thus aggrieved, the applicant has filed the present O.A. praying for the relief as stated above.

3. The applicant has submitted that after the earlier orders of this Tribunal in O.A. No.192/2010 as upheld by the Hon'ble High Court and the Hon'ble Apex Court the issue has been finally settled. Therefore, the period of training has to be reckoned for the purpose of sanction of 1st financial up-gradation under ACP Scheme. Therefore, the rejection of the case by the Respondents is against the settled law in the matter. Respondents had taken a plea that O.A. No.427/89 ^l which was filed by this applicant along with 136 others with a prayer for regularization of their services. This is a fact which has been suppressed by the applicant ^l as alleged by the Respondents. The applicant has

pleaded that the earlier O.A. has no relevance to the present O.A. The issue in the present case is whether the period of training from 30.03.1988 to 04.09.1997 should be treated as qualifying period for the purpose of sanction of 1st financial up-gradation under ACP Scheme. There is no scope for the Respondents except to treat this matter in rem. In view of the fact that the same issue has already finally decided, by re-opening this matter the respondents are violating the orders of the Tribunal as well as the Hon'ble High Court and the Hon'ble Apex Court, as applicant has added. The main plank of argument of the applicant is that when a particular benefit has been extended to all similarly placed employees, the department must give the same benefit, this principle ^{has} ~~is~~ gained support from a plethora of decisions of the Hon'ble Apex Court. As per the settled law the similarly placed persons cannot be denied the said benefits on the ground that they had not approached the Court. Thus the prayer of the applicant is that the order of rejection should be quashed and the respondents should be directed to confer the 1st financial up-gradation to the applicant w.e.f. 29.03.2000 and pay the differential arrears.

4. In the counter affidavit filed by the respondents it has been submitted that the applicant was appointed as a Trainee Skilled Artisan on 30.03.1988 with stipendiary pay of Rs.950 per month plus allowances as admissible. The terms and conditions of such appointment is that although all efforts were to be made to absorb the applicant in the regular cadre after successful completion of the period of training, but no guarantee was given to the applicant that he would be regularly absorbed. Due to want of working post the applicant could not be regularized after completion of six months of training and therefore, the training period was extended from 30.03.88 to 03.09.1997. Thereafter, because a working post was

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available the applicant was regularized as Tech. Gr.III(Welder) w.e.f 04.09.1997. It is admitted in the counter affidavit that similarly placed person one Sri Chittaranjan Mohanty had filed O.A. No.192/2010 before the Tribunal. The Tribunal decided that the period of training shall be treated as qualifying period for considering ^{grant} ~~that~~ of 1st ACP. The Respondents-Railways had challenged the order before the Hon'ble High Court of Orissa by filing W.P.(C) No.12425/2012 which was dismissed by the Hon'ble High Court vide order dated 06.02.2013. Again this order was challenged before the Hon'ble Apex Court by the Respondents by filing SLP No.11040/2013. The said SLP was also dismissed vide order dated 02.08.2013 by the Hon'ble Apex Court. Although the orders have been implemented in respect of the applicants of O.A. No.192/10 it is specifically mentioned in that order that this order would not be quoted as precedent in similar cases. By making these submissions the Respondents have argued that the prayer of the applicant is not sustainable since his period of service was regularized only in the year 1997 and the period of training cannot be calculated for grant of ACP.

5. The applicant has filed a rejoinder in which he has cited number of judicial decisions of the Hon'ble Apex Court in order to drive home his point that similarly placed persons should be extended the same benefit as has been granted to the applicant in O.A. No.192/10. Since this is a settled law the Respondents are duty bound to extend the similar benefits to the present applicant.

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

7. The substantive issue for determination in this case is whether the period of training would be treated as qualifying service for the purpose of

Peer

consideration of ACP. In O.A No.192 of 2010, the precedent case cited, the issue was decided in favour of the applicant and the Tribunal directed respondents "to count the period of service of the applicant from 29.03.1988 for the purpose of grant of ACP and allow the applicant financial benefits under ACP if he fulfills the other conditions required for grant of financial upgradation under ACP. This order has been upheld by the Hon'ble High Court of Orissa, and later by the Hon'ble Apex Court. The matter has reached its finality, and benefits have been awarded to the applicant in O.A No.192/2010. There appears to be no dispute in this regard. It has also been brought to our notice that O.A No.90/2014 and O.A No. 801/2013 filed by similarly placed employees on the same subject matter have been disposed of by the Tribunal on 30th July, 2015, by directing the respondents to reconsider the claim of ACP on completion of 12 years of service from the date of appointment by counting the period of training towards qualifying period of service. While passing these directions, the Tribunal placed reliance on the earlier orders in O.A No.192/2010 which have been confirmed by the orders of Hon'ble High Court and Hon'ble Apex Court. It was observed that similar relief was granted to applicant of O.A No.41/2011. The following were the observations for the Tribunal, "Therefore, in our considered view, the point in issue being set at rest, we have no hesitation to hold that the period spent under training till the date of regularization of his service is reckonable for the purpose of grant of 1st ACP Scheme."

8. In the O.A. under consideration before us, it is admitted that similar facts are involved, and the same issue is to be adjudicated. Therefore, applicant's submission that there is a precedent decision for the present case is supported by facts.



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.”

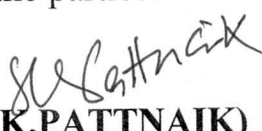
10. In view of the preceding discussion of the facts, and also the law as laid down by the Hon'ble Apex Court in several decisions, we are of the opinion that there are no grounds for making any discrimination against the applicant since respondents have extended the benefit of ACP to similarly placed 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~~
~~order (Supra).~~

11. In view of the discussions made above, we are of the view that the applicant's prayer for extension of ^{some} benefits as given to the applicants in O.A. No.192/2010 ^{is} founded on strong legal footing. ^{The settled law} ^{is} for employees similarly situated should be extended ~~to~~ the same benefits in ordinary circumstances. We therefore, quash the order dated 09.01.2014 passed by respondents at Annexure-A/8 and direct the respondents to calculate the period of training as regular service and reconsider the case of the applicant for grant of 1st financial up-gradation w.e.f. 29.03.2000 on completion of 12 years of qualifying service subject to fulfillment of other conditions as per rules and confer the benefits as aforesaid ^{on} ^{the} applicant within a period of 90 days of receiving a copy of this order.

12. 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)