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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 762/2014

this the 2nd day of January, 2017

CORAM

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

Rabindra Parimanik aged about 52 years S/o Late Shri Banshidhar Parimanik, permanent resident of At Biswali, Bhutmundai, District Jagatsinghpur, at present working as a Technician-II / Painter, Grade III, Office of CWM / CRW / East Coast Railway / 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, Chandrasekharapur, Bhubaneswar, 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.

...Respondents

By the Advocate : Shri B.B.Patnaik

O R D E R

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

The applicant who is a Railway employee has approached the Tribunal by filing this OA praying for *the following reliefs*:

- "a. To quash the order of rejection dated 8.10.2014 under Annexure-A/8;
- b. And to direct the Respondents to grant 1st financial up-gradation w.e.f. 31.3.2000 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/4 & A/5."

2. The facts as adumbrated in this O.A. are that the applicant joined the Railway Establishment on 30.03.1988 as a Skilled Artisan in the scale of pay of Rs. 950-1500, and thereafter sent for in-service training for a period of six months. After the period of training was over, he was allowed to continue in the same scale of pay and was also sanctioned increments. He thus continued uninterrupted till his services were regularised by an order dated 01.04.1997 w.e.f. the same date. In this order which is enclosed to the O.A. at Annex.A/1, the applicant's date of joining has been shown as 30.03.1988.

3. In the Assured Career Progression Scheme (ACP) introduced by the Govt. on the basis of recommendation of the 5th Pay Commission, it was provided that in the absence of regular promotion, a regular employee shall be entitled for two financial upgradation at

the end of 12 years and 24 years of service. The applicant's appointment was against regular vacancy with effect from 30.03.2000¹⁹⁹⁸. Therefore, the case of the applicant is that he had completed 12 years of qualifying service as on 31.03.2000^{31 03}, in spite of which his case was not referred to the Screening Committee for consideration of grant of first financial upgradation under the ACP Scheme. Railway employee having similar service profile had approached the Tribunal in O.A. No.192/2010 which was disposed of by the Tribunal on 22.03.2012. In the same order, the Tribunal observed that as per Estt. Srl. No.109/1992 the period of training is to be treated as duty for the purpose of grant of increments, and therefore directed the Railway-respondents to compute the period of temporary service from the initial date of appointment towards qualifying period of service for grant of ACP. On being appealed against in WP(C) No. 12425/2012 by the Railway-respondents, the order of the Tribunal was upheld by the Hon'ble High Court of Orissa. In their order dated 06.02.2013, the Hon'ble High Court directed that the period for which the employee was under training has to be calculated for the purpose of grant of ACP, and accordingly found no error in the order of the Tribunal. The respondents challenged the orders of Hon'ble High Court before the Hon'ble Apex Court in SLP No. 11040 / 2013 which was dismissed by an order dated 02.08.2013.

4. In view of the orders of the Tribunal passed in O.A. No. 192/2010, which was upheld by the Hon'ble High Court, and subsequently the Apex Court, applicant submitted a representation dated 17.09.2000 to respondent No. 3 praying that his first financial upgradation under ACP Scheme may be granted w.e.f. 31.03.2000. The respondent No. 3 disposed of the representation of the applicant by a speaking order dated 08.10.2014, and rejected the prayer for sanction of 1st ACP.

This order of rejection dated 08.10.2014 filed at Annex.A/8 of the OA is impugned in the present case. It is stated in the order that applicant was appointed as Trainee Skilled Artisan on 30.03.1988. Though, the initial period of training was six months, due to want of working post his regularisation could not be effected on completion of six months training, such training period was extended from 30.03.1988 to 31.03.1997. On availability of working post he was regularised as Technical Grade - ^{III} (Painter) w.e.f. 01.04.1997. The provisions of the ACP Scheme lay down that employee would be eligible for grant of 1st ACP on completion of 12 years of regular service. The applicant was regularly appointed on 01.04.1997, and the period from 30.03.1988 to 31.03.1997 was

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treated as training period. Therefore, the applicant was considered as eligible for sanction of 1st ACP w.e.f. 01.04.2009. It is further stated in the impugned order that one Chittaranjan Mohanty had filed O.A. No. 192/2010 before the Tribunal making a similar prayer which was allowed. The respondents had filed a Writ Petition before the Hon'ble High Court, challenging the order of the Tribunal. The Writ Petition was however dismissed. Subsequently, respondents filed a SLP before the Apex Court, but the said SLP was also dismissed. Therefore, the judgment was implemented in favour of the said Shri Chittaranjan Mohanty, specifically stating that this is not to be quoted as precedent in similar cases in future. In the impugned order, it was finally communicated that there was no scope of regularizing the applicant on any date prior to 01.04.1997, since no working post was available before that date, because of which the training period was extended. The decision of respondents was that as on 31.03.2000, the applicant had not completed 12 years of regular service and was thus ineligible for grant of 1st ACP.

5. The respondents in their counter-affidavit submit that applicant was temporarily appointed as a trainee skilled artisan by an order dated 18.03.1988. The period of training was extended, because of lack of working posts. The applicant along with 137 trainees had approached the Tribunal by filing O.A. No. 427 of 1989 praying for regular absorption. This was disposed of by the Tribunal in order dated 15.10.1990, ^{which} and directed respondents to absorb the applicants in regular posts within a period of three months. The applicant was subsequently regularized as Technical Grade-III/Skilled Artisan in the scale of Rs. 950-1500 revised to Rs. 3050-4590 on 01.04.1997. In the context of above facts, the respondents submit that till his absorption against a sanctioned post the applicant was not a Railway employee and was only a trainee skilled artisan engaged on stipendiary basis. According to the submission of respondents, the question of sanction of 1st ACP prior to 01.04.2009 does not arise.

6. In the rejoinder, the applicant has submitted that the Railway Board has issued Estt. Srl. No. 45/1991 regarding counting of training period for the purpose of drawing increments. Estt. Srl. No. 109/1992 has further laid down that Estt. Srl. No. 45/1991 was effective from 01.01.1986. Further, respondents are computing 100% of the entire period from the date of appointment as qualifying period for the purpose of pension. As per the principle laid down by Railway Board in RBE No. 64/2004, any service computed as qualifying service can be computed for the purpose of grant of financial upgradation

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under ACP Scheme. The applicant further submits that O.A. No. 427/1989 has no nexus with the present case. The respondents in their counter-affidavit have not taken a stand that the case of the applicant is different from the case of Shri Chittaranjan Mohanty, the applicant in OA No. 192/2010. Therefore, the plea of the applicant is that the same relief may be extended to applicant who is a similarly situated employee. To strengthen his submission, the applicant has cited decisions of the Hon'ble Apex Court in **Sub-Inspector Rooplal Vs. Lt. Governor** [2000 SCC (L&S) 213] and in **Official Liquidator Vs. Dayananda and Ors.** (2009) 1 SCC (L&S) 943 emphasizing the principle of judicial discipline that decisions on similar matters of co-ordinate and higher Benches have to be respected and followed. It is submitted that according to principles laid down by Apex Court, Tribunal would be guided by precedence, and could not overlook the fact that this Tribunal in OA No. 192/2010 has already decided the ^{point} ~~post~~ in issue, and subsequently, in OA Nos. 41/2011, 377/2012, 378/2012 and 379/2012 has taken the same view as in OA No. 192/2010. The judgment of the Hon'ble Supreme Court in the case of **Sub-Inspector Rooplal Vs. Lt. Governor** reported in 2000 SCC (L&S) 213 has been brought to our notice. The Apex Court in the said judgment has observed that "precedent law must be followed by all concerned and deviation from the same should be only on a procedure known to law". Further, in the case of **Official Liquidator Vs. Dayananda & Ors.** [(2009)1 SCC (L&S) 943], the same principle has been re-emphasized and the Apex Court has highlighted "adherence to the rule of judicial discipline which is sine qua non for sustaining the system". In the rejoinder, the applicant has urged that the Tribunal should go by the precedent of law already pronounced in respect of employees placed in similar situation.

7. Having heard the learned counsels representing both sides, we have perused the records. It is clear from the pleadings that the issue for resolution in the case is whether the period under training would be treated as part of regular service or not. If it is treated as regular service, then very obviously, the regular service period will be counted from the initial date of appointment, i.e. 30.03.1988, and it follows that he would be entitled for grant of 1st ACP on 31.03.2000 on completion of 12 years of regular service. One cardinal factor for consideration of this case is whether applicant was getting increments in a regular scale of pay from the date of appointment during his period of training, until the date he was regularised in the year 1997. The respondents have insistently pleaded that applicant was on a stipend during his training. However, in the counter-affidavit they

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have submitted that in fact they were given regular increment, and paid accordingly, which they have mentioned as an inadvertent and wrong payment. This they have admitted in respect of all similarly situated employees. This factual position as admitted by respondents takes the bottom out of their argument that the period of training will not count towards eligibility for grant of ACP. Sanction of increment in a regular scale of pay is sine qua non of regular service. The respondents have themselves awarded increments, and when the claim of ACP is raised, they are countering such claim by taking an excuse that grant of increment was an inadvertent error. Grant of increment ^{for} ~~for~~ period of training amounts to a tacit admission that applicant has a valid claim of regular service during training period. Now respondents when faced with a claim of ACP, must not be allowed to make a contrary submission. In other words, the respondents cannot be allowed to approbate and reprobate simultaneously. In our opinion, they cannot resile from their position with regard to the status of the applicant. Such abandonment of a status which they have already conferred on the applicant and also on similarly situated persons will not be countenanced by service law.

8. The respondents have submitted that applicant in this O.A along with others was also an applicant in O.A No. 427 of 1989, a fact that he has suppressed. On perusal of the orders in O.A No. 427 of 1989, we find that it was an O.A filed by 137 persons. The Tribunal in a detailed order dated October, 16, 1990 disposed of the matter, and directed the respondents to "get the applicants absorbed in the regular cadre of skilled artisans Grade III within a period three months by doing the needful." After perusing this order, we are inclined to hold that this will not have any bearing on the claim made by the applicant in this O.A.

9. The next critical ground for consideration ^{is} ~~in~~ the precedence laid down in the judgment rendered earlier in respect of similarly situated persons. 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

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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 Apex Court. It was observed that similar relief was granted to applicant of O.A No.41/2011. The following were the observations ^{of} ~~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."

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.

10. That similarly placed employees should be similarly treated in terms of conferment of benefits has been emphasized by the Apex Court in various decisions. Reference may be made to ***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 Apex Court made 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."

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11. In view of the preceding discussion of the facts, and also the ^{law} ~~flow~~ as laid down by the Apex Court in several decisions, we are of the opinion^{any} that there are no grounds for making ~~any~~ discrimination against the applicant since respondents have extended the benefit of ACP to similarly placed employees. That the period of training would be reckoned as qualifying period of service for sanction of 1st ACP has been held by the Tribunal in several OA's, and equality and fairness demand that the same principle should govern the decision in the present case. That also will be in consonance with judicial discipline, which has been emphasized in the decision of the Apex Court in the matter of **S.I. Rooplal Vs. Lt. Governor** as quoted in this order(Supra).

12. In conclusion, therefore, we quash the order dated 08.10.2014 passed by respondent authorities, and direct the respondents to reconsider the grant of 1st financial upgradation by treating the period of training as qualifying period, w.e.f. 31.03.2000, i.e. the date of completion of 12 years of regular service, subject to fulfilment of other conditions, as per rules, and confer the benefits on the applicant within a period of 90 days of receiving a copy of this order. The O.A. is thus allowed to the extent mentioned above, with no cost to the parties.

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

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