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A. KUMAR BAHALIA VS. UOI & ORS.

Hearing Sl.No. 27
Original Application No. 8/2014

Date of order - 21st Sept., 2016

C O R A M

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

.....

Heard Shri N.R.Routray, learned counsel for applicant and
Shri R.N.Pal, learned panel counsel, on behalf of respondents,
in part.

List the matter under the heading Part Heard on 23.09.2016,
on which date, the hearing shall be concluded.


MEMBER(J)


MEMBER(A)

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A.K.Bahalia Vrs. UOI

Part Heard Sl. No. 20

O.A. No. 08 of 2014

Order dated: 23.09.2016

CORAM

HON'BLE SHRI R.C.MISRA, MEMBER (ADMN.)
HON'BLE SHRI S. K. PATTNAIK, MEMBER (JUDL.)

.....

Heard Mr. N.R.Routray, Ld. Counsel for the applicant, and
Mr. R.N.Pal, Ld. Panel Counsel for the Respondent-Railways.

Hearing is concluded. The matter is reserved for orders.


MEMBER(Judl.)


MEMBER(Admn.)

RK

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AKSHAYA KUMAR BHALLA VS. UOI & Ors.

For Pronouncement of Orders Sl.No.2

O.A.No. 8/2014

Order Dated : 03.01.2017

Order of the Bench consisting of Hon'ble Sh. R.C.Misra, Member (A) and Hon'ble Sh. S.K.Pattnaik, Member (J), has been pronounced in open Court today. See separate detailed order.

P.K. Mishra
3.1.17
[P.K.Mishra]
Court Officer

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 260/00008 of 2014
Cuttack, this the 3RD day of January 2017.

A.K. Bahalia.....Applicant

-Versus-

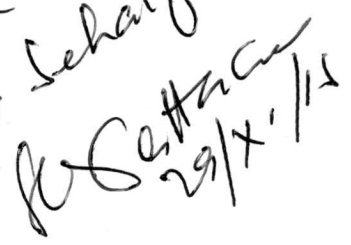
Union of India & Others Respondents

FOR INSTRUCTIONS

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


(S.K.PATTNAIK)
MEMBER (J)


(R.C.MISRA)
MEMBER(A)

I authorize
Hon'ble member
Dr R C Misra to
pronounce the judgment
on our behalf

29/1/17

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 260/00008 of 2014
Cuttack, this the 3rd day of January 2017.

CORAM

HON'BLE SHRI R. C. MISRA, MEMBER (ADMN.)
HON'BLE SHRI S.K. PATNAIK, MEMBER (JUDL.)

.....

Akshaya Kumar Bahalia, aged about 50 years, Son of Kulamani Bahalia, At-Andhoti, P.O- Harianta, Dist-Cuttack, at present workings as a Technician Grade-II (Fitter) Office of C.W. M/CRW/East Coast Railway/Mancheswar, Bhubaneswar, Dist-Khurda.

...Applicant

(Advocates: M/s. N.R.Routray, J. Pradhan, T.K. Choudhury, S.K. Mohanty)

VERSUS

Union of India Represented through its:

1. General Manager, East Coast Railway, E.Co.R. Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Senior Divisional Personnel Officer, East Coast Railway, Sambalpur Division, At-Khetrajpur, P.O-Modipara, Tow/Dist-Sambalpur.
3. Workshop Personnel Officer, Carriage Repair Workshop, E.Co. Rly., Mancheswar, Bhubaneswar, Dist-Khurda.
4. Mr. S. K. Mishra, W.P.O., Carriage repair Workshop, E. Co.Rly., Mancheswar, Bhubaneswar, Dist-Khurda.

... Respondents

(Advocate: Mr. R. N. Pal)

ORDER

R. C. MISRA, MEMBER (ADMN.):

The applicant who is a Railway employee has approached the Tribunal by filing this OA praying for the following relief.

- "a. To quash the order of rejection dated 12.12.2013 under Annexure-A/8;
- b. And to direct the respondents to grant 1st financial up-gradation w.e.f. 01.04.2000 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/-."



2. Shorn of unnecessary details, the brief facts of the case are that the applicant being initially appointed on 30.03.1988 as Welder in the scale of Rs.950-1500/- was sent for in-service training for a period of six months. At the time of completion of training his status was temporary, and he was allowed to enjoy the scale of pay and increments meant for that post without any break. His services were regularized by Office Order dated 28.08.1998 as skilled Gr. III in the Fitter's Grade in the scale of pay of Rs.3050-4590/-. In the same office order, it was shown that his date of joining was 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 upgradation² at the end of 12 years and 24 years of service. The applicant's appointment was against regular vacancy with effect from 30.03.1988. Therefore, the case of the applicant is that he had completed 12 years of qualifying service as on 01.04.2000, 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 Esstt. 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.

4. In view of the orders passed by the Tribunal which were upheld by the Hon'ble High Court, the present applicant, claiming similarity of status with the applicant of O.A. No.192/2010, submitted a representation to the respondents praying that his first financial upgradation under ACP Scheme may be granted w.e.f. 01.04.2000. Meanwhile, the Railways had challenged the orders of the

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Hon'ble High Court by filing SLP NO.11040/2013 before the Hon'ble Apex Court. This SLP was dismissed by an order dated 02.08.2013. The applicant submitted a reminder representation, and on getting no response, he filed OA No.840/2013, which was disposed of by the Tribunal by an order dated 11.12.2013 by directing respondents i.e. Railways to consider the representation and communicate their well reasoned decision to the applicant. In compliance of this order, respondents passed a reasoned order dated 12.12.2013 in which they rejected the representation on the ground that as on 01.04.2000, applicant had not completed 12 years of regular service. This order placed at Annexure-A/8 of the O.A. is the subject matter of challenge in this O.A.

5. The respondents have filed a counter affidavit, repudiating the claim of the applicant. It is submitted by them that the applicant was absorbed in the cadre of skilled Artisan Grade-III in compliance of directions of the Tribunal in O.A. No. 427/1989 which the applicant had filed, along with others. This fact having bearing on the present O.A has been suppressed by the applicant. Further, the period of service from 30.03.1988 to 27.08.1998 is not part of regular service, and therefore cannot be counted as qualifying service for the purpose of grant of first financial upgradation under the ACP scheme. The applicant can rightfully claim service benefits w.e.f. 28.08.1998 which is the date of absorption against a working post. He certainly cannot claim such benefits from 30.03.1988, the date of his initial appointment. The submission of respondents is also that the claim of the applicant is afflicted by delay, in as much as in the year 2013, he raised his grievance, claiming benefit of ACP Scheme by relating his service back to the year 1988. They have cited the orders of the Apex Court in the case of Chennai Water Supply and Sewerage Board & Others Vs. T.T. Muraali Babu reported in AIR 2014 SC/1410. In the said decision, the Apex Court has laid down that "delay does ^{bring} ~~being~~ in hazard and causes injury to the lis." The Hon'ble Supreme Court has directed that Courts and Tribunals must not ignore the issue of delay and must not be anxious to grant relief to a litigant who has forgotten the basic norms, such as "Procrastination is the greatest thief of time", and "law does not permit one to sleep and rise like a Phoenix."

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6. The respondents have gone on to submit that the training period was extended beyond the period of six months, and absorption was effected on 28.08.1998 when a working post was available. In the order of appointment there was no promise of absorption, and absorption was delayed because no working post was available. But this period of training cannot be counted against qualifying period of service for considering conferment of financial upgradation. The applicant having not completed twelve years of service as on 01.04.2000, the respondents could not have considered his case for grant of 1st ACP benefit, under the Rules. The reliance of the applicant on the precedent of the orders of the Tribunal in O.A NO.192/2010 has been strongly contested by respondents, who claim that in the order issued in respect of C.R. Mohanty, similarly placed employee, it was mentioned specifically that this order is not to be quoted as a precedent in similar cases.

7. The applicant in filing a rejoinder has emphasized upon the fact that the benefits extended to the applicant in O.A No.192/2010 should also be given to the applicant in this O.A, in view of the similarity of the service profile that is crucial for consideration of 1st ACP. He also cites Estt. Sr. No. 45/1991 and Estt. Sr. No. 109/1992 issued by the Railway Board regarding eligibility to draw increments during the training period. It is further submitted that O.A No.427/1989 has no nexus with the present case, as the prayer of the applicant in the present O.A is not about antedating the date of regularization, but is about counting the training period as qualifying period of service for the purpose of consideration of 1st ACP.

8. The applicant has relied upon some judgments of the Apex Court to drive home his point that the Tribunal would be guided by precedence, and could not overlook the fact that this Tribunal in O.A No.192/2010 has already decided the point in issue, and subsequently in O.A. No. 41/2011, O.A. No.377/2012, O.A. No.378/2012 and O.A. No.379/2012 has taken the same view as in O.A. No. 192/2010. The judgment of the Hon'ble Supreme Court in the case of Sub-Inspector Rooplal Vs. ^eLt. 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 & Others, (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.

9. Having heard Ld. Counsel representing both parties, we have perused the records. We need to first deal with the objection of respondents that there has been delay in filing this OA. However, the claim of the applicant is with regard to ACP benefit which is related to his pay, and even though the applicant has approached the Tribunal late, the prayer ^{reflects} ~~reflects~~ a continuous cause of action. Secondly, the facts reveal that the applicant made representation to the respondents for extension of benefits to him as already decided in favour of the applicant in O.A No.192/2010. Since the respondents did not take any action on the representation, the applicant approached the Tribunal in his first round of litigation, wherein the Tribunal issued the direction that respondents should dispose of the pending representations.. Again, the respondents passed an order of rejection by disposing of the representation. That gave rise to a further cause of action for the applicant to challenge the impugned order. We therefore, are of the view that limitation and delay must not be allowed to frustrate the substantive claim of the applicant.

10. The respondents have submitted that the 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.

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

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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~~ of 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.

12. 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."

13. In view of the preceding discussion of the facts, and also the ^{law} ~~fact~~ as laid down by the Apex Court in several decisions, we are of the opinion that there are no grounds for making nay 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 SI Rooplal Vs. Lt. Governor as quoted in this order(Supra).

14. In conclusion, therefore, we quash the order dated 12.12.2013 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. 01.04.2000, i.e. the date of completion of 12 years of regular service, subject to fulfillment of other condition, 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)
MEMBER (J)


(R.C.MISRA)
MEMBER(A)