

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 260/00761 of 2014
Cuttack, this the 14th day of November, 2017

CORAM
HON'BLE MR. S.K.PATTNAIK, MEMBER (J)
HON'BLE DR. M. SARANGI, MEMBER (A)

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Bijaya Kumar Sasmal,
Aged about 53 years,
S/o Late Nanda Kishore Sasmal,
Permanent resident of At-Damodarpur,
PO- Radhanga, Via- Nalibar, Dist- Jagatsinghpur,
At present working as Technician-II/Trimmer,
Office of C.W.M./CRW/East Coast Railway/
Mancheswar, Bhubaneswar, Dist. Khurda.

...Applicant

Advocates: 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

Advocate(s) : Mr. S.K.Ojha

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ORDER

S.K.PATTNAIK, MEMBER (JUDL.):

The applicant, in this O.A., seeks quashing of the order dated 09.10.2014 (Annexure-A/8) wherein the competent authority did not grant ACP for the Trainee Artisan period with stipendiary pay and allowed ACP from regular service. The applicant has further prayed for a direction to the Respondents to grant First Financial Upgradation with effect from 04.04.2000 treating his induction as a Trainee as regular service.

2. The applicant's case, in short, runs as follows:

The applicant was initially appointed as Skilled Artisan/Trimmer w.e.f. 05.04.1988 in the scale of Rs. 950-1500/- through a regular process of selection and was sent for in-service training for a period of six months. After successful completion of training, his status was temporary, however, he was allowed to continue in the aforesaid post with the scale of pay and increments meant for that post without any break. In the meantime, the service condition of the applicant was amended in implementation of Estt. Sl. No. 45/1991 and 109/1992. The applicant was granted notional increment from the date of his appointment, i.e. 05.04.1988 till 30.09.1990 and actual increment from 01.10.1990 onwards. The Respondents counted the period from 05.04.1988 towards his seniority, promotion and 100% qualifying service for pensionary benefit by treating the period as duty. While working as Skilled Artisan/Trimmer, his service, along with others, was regularized vide order dated 04.09.1997 (Annexure-A/1) against the

existing post in scale of Rs. 3050-4590/-. To deal with the genuine stagnation and hardship of the employee, as a safety net, the Fifth Central Pay Commission made certain recommendations relating to the Assured Career Progression Scheme for the Central Govt. Civilian employees in all Ministries/Departments. His grievance is that although his initial appointment w.e.f. 05.04.1988 in the post of Skilled Artisan/Trimmer was against a regular vacancy for which he was sent for in-service training, till now his case has not been referred to the Screening Committee for consideration of 1st Financial Upgradation w.e.f. 04.04.2000, i.e. after completion of 12 years of qualifying service. The applicant has relied upon the decision of this Tribunal dated 22.03.2012 in O.A.No. 192/2010 filed by similarly situated person for a direction to the Respondents to compute the temporary service period as 100% qualifying service for grant of financial upgradation under ACP Scheme on the analogy that temporary appointment is always made against regular post and the training period was in-service training. The Tribunal vide order dated 22.03.2012 (Annexure-A/4) observed as under:

“We have perused the Estt. Srl. No. 109/1992 whereunder the Railway have decided that the period of training will be treated as duty for the purpose of grant of increments to those railway servants who have undergone such training on or after 01.01.1986. It has further been provided therein (Estt. Srl. No. 109/92) that the benefit of counting the period for pay will be admissible on notional basis from 01.01.1986 and on actual basis from 01.10.1990. In view of the above the contention of the Respondents that the period spent by the applicant a Trainee Artisan and hence is not reckonable for the purpose of ACP cannot be

accepted. Since the period from 1988 onwards has been treated as duty and pay has been refixed allowing annual increments though on notional basis, there cannot be any ambiguity on the issue that the said period of service cannot be taken into account for the purpose of reckonable service for grant of ACP.”

The Hon’ble Tribunal further directed the Respondents to compute the temporary service period as qualifying service and grant financial upgradation under ACP Scheme.

3. The Railway authorities challenged the aforesaid order of the Tribunal by filing W.P.(C) No. 12425/2012 before the Hon’ble High Court of Orissa. The Hon’ble High Court vide order dated 06.02.2013 (Annexure-A/5) dismissed the Writ Petition with the following observation and direction:

“On perusal of clause 5.2 of the ACP Scheme, we find that residency periods (regular service) for grant of benefits under the ACP Scheme shall be counted from the grade in which an employee was appointed as a direct recruit. It is needless to say that the employees on being appointed as direct recruits were sent for training. Therefore, the period for which the opposite party was under training has to be calculated for the purpose of grant of ACP. We find no error to have been committed by the learned Tribunal in passing the impugned order.”

The S.L.P. No. 11040/2013 filed by the Respondents challenging the aforesaid order of the Hon’ble High Court of Orissa, has been dismissed by the Hon’ble Apex Court vide order dated 02.08.2013 (Annexure-A/6).

4. Relying upon the aforesaid decisions of the Hon'ble Courts, the applicant preferred an exhaustive representation on 17.09.2014 for grant of 1st Financial Upgradation under ACP Scheme w.e.f. 04.04.2000. The applicant alleging malafide has submitted that the Respondent No.3 vide order dated 09.10.2014 rejected his representation without proper application of mind and without examining the case in its letter and spirit as per the direction of the Hon'ble High Court. It has been submitted that the applicant had made representation for grant of financial upgradation by taking into account the temporary period of service and has not prayed for regularization of the same. In the speaking order, there is no reference regarding failure of the applicant or extension of the training period. The specific case of the applicant is that he was appointed to the post of Trimmer w.e.f. 05.04.1988 and was sent for in-service training and, after completion of training within the stipulated period, he was allowed to continue in the post of Trimmer without break. After completion of one year, he was also granted annual increment. After implementation of RBE No. 45/1991 and 109/1992, the entire period was treated as duty for all purpose. The plea of the Respondent No.3 that the entire period, i.e. from 05.04.1988 to 03.09.1997, was treated as training period and there was no scope at all to regularize the service in the absence of regular working post amounts to clear violation of the orders passed by this Tribunal in O.A.No. 192/2010 and by the Hon'ble High Court in W.P.(C) No. 12425/2012. The Respondent No.3, on the other hand, has not disputed the grant of increment and scale of pay from the

date of appointment till the date of regularization of the applicant like that of Shri C.R.Mohanty, the applicant of O.A. No. 192/2010. Being aggrieved by the order of rejection dated 09.10.2014, the applicant approached this Tribunal in the present O.A.

5. Respondents contested the case by filing a counter. The Respondents have clarified that in the year 1981 and 1985 Advertisements were issued inviting applications from the ITI passed candidates possessing National Trade Certificate under different Trades for recruitment as Apprentice Trainee Artisan on stipendiary basis for being eventually absorbed as Skilled Artisan in Carriage Repair Workshop, Mancheswar (A copy of Employment Notice has been filed under Annexure-R/1). In the meantime, a proposal was sent to the Railway Board for sanction of posts as per requirement in Phase-I, II and III for Mancheswar Workshop. In pursuance of the aforesaid Advertisement, the offer of Temporary Appointment as Trainee Skilled Artisan on stipendiary basis was issued in favour of the applicant vide letter dated 18/25.03.1988 with the condition that at the end of training period, he will be subjected to a test and his absorption in a working post will depend upon his performance in the test and failure in the test would, however, render him liable to be discharged. If after completing the course of training his progress is not considered satisfactory, it will be open to the administration to extend the period of his training at the discretion of the competent authority or to subject him to a “repeat course” without payment of stipends. It is however, open to the

administration to terminate his employment with or without extending the period of training or giving a “repeat course” or in the event of his progress being considered un-satisfactory even at the end of “repeat course” (A copy of the Asst. Works Manager/Mancheswar offer of appointment letter No. CRW/MCS/Rectt/ITI(Trg)86 dated 18/25.03.1988 has been filed as Annexure-R/2).

6. Respondents have further pleaded that there was no sanctioned post by the time the applicant and some other trainees completed their training and, therefore, their training period was extended. The Railway administration gave notice twice to the candidates like the applicant to opt for absorption as Group-D category in Diesel Shed of other units of Indian Railway, but there was no response from the applicant. Instead of exercising their options the applicant along with other 137 trainees approached this Hon’ble Tribunal by filing OA No. 427 of 1989. In the aforesaid OA the applicants had prayed for regularization of their services as Skilled Artisan and to declare the letter dated 09/10/1989 inviting option as invalid and illegal. The Railway Administration filed a counter stating that no sanctioned posts are available to regularize the applicants in Skilled Artisan category and that is why they have been asked to exercise the option to work under other workshops. This Tribunal disposed of OA No. 427 of 1989 vide its judgment dated 15.10.1990 with the direction that *“In such circumstances we would say that the interest of justice would be best served by sanctioning equal number of post to absorb the applicants on*

whose training the Railway administration has spent money paying stipends and also engaging instructors. We direct the Respondents to get applicants absorbed in the regular cadre of Skilled Artisan Gr. III within a period of 3 months by doing the needful". In obedience to the above judgment, 11 applicants out of 137 belonging to SC/ST community were absorbed against the vacancies of direct recruitment quota in 3 months from the date of the judgment. But the rest of the applicants of the aforesaid OA could not be absorbed in the absence of vacancy in the regular post. Therefore, CP No. 10/91 was filed on 12.04.1991 by the applicants alleging violation of the order of this Hon'ble Court dated 15.10.1990. In compliance to the orders of this Hon'ble Tribunal dated 09.11.1992 passed in the contempt petition, all the balance 84 trainees were offered the post of Diesel Driver Assistant in the scale of Rs. 950-1500/- vide CPO/South Eastern Railway, Garden Reach Office Memo No. P/L/13/D/144/Tr. Appr. dated 25.11.1992 against Skilled Gr. III post of MCS and KGP (W/S). Out of the above 84 applicants, only 34 applicants of OA 427/89 filed MA No. 538 of 1992 for passing appropriate orders. The Hon'ble Tribunal upon hearing the aforesaid MA disposed the MA vide order dated 26.06.1994 and passed the orders that *"since admittedly there are 49 posts/vacancies in the grade of Skill Artisan Grade III we direct that 32 Petitioners in the MA shall be absorbed against those 49 vacancies within 30 days from the date of issue of the copy of this judgment"*. The Railway administration being aggrieved by the aforesaid order approached the Hon'ble Supreme Court

by filing SLP(C) No. 6648 of 1995. However, in the meantime all the applicants of OA No. 427 of 1989 including the present applicant were absorbed under the Mancheswar Workshop. The applicant was regularized/absorbed as Technical Grade III/Skilled Artisan in the scale of Rs. 950-1500/-revised to Rs. 3050-4590/- on 04.09.1997 vide CRW office order No. CRW/MCST/Trg. Arts/Reg/92/2943 dated 04.09.1997 under Annexure A-1 to the OA. In this context, broadly speaking, the Railway administration engages two types of Apprentices, one set of Apprentices are engaged purely under the Apprentices Act, 1961 to whom Railways except imparting training does not provide any other facility and the other kind of Apprentices are recruited from out of the ITI pass outs or having higher qualification by Railways to impart training at the railway cost eventually to be appointed against regular post under Railway. Para 2202(2) Railway Establishment Code Vol-II as it stood at the relevant point of time defines an Apprentice to mean a person deputed in a trade or business with a view to employment in Government service. Trade Apprentices are recruited by the Railway Administration to fill 50% of the vacancies of skilled grades in Railway workshops. The age limit prescribed is between 15 to 20 years for non-ITI candidates, 22 years for ITI candidates and for SC/ST the age limit will be relaxable by 5 years. The education qualification is prescribed as Middle School Standard. Further Trade Apprentices are governed by the provision of Apprentices Act and not under Railway Rules so far as

stipend and hours of work etc. are concerned but abide by the discipline of Railways.

7. Before delving into the merit of this case, some factual/legal matrix needs to be stated to make the dispute straight and transparent.

(a) Under Annexure-R/2 appointment letter was issued to the applicant stating that he has been selected to undergo training in Painting for a period of six months. Admittedly, the Railways did not extend the training period at any point of time though the Skilled Artisans continued under the training.

(b) As per the Railway Board Estt. Sl. No. 109/1992 (Annexure-R/3) there was direction for counting of training period before regular appointment for the purpose of drawing increments and, accordingly, Skilled Artisans were granted annual increments.

(c) Since the applicant and other similarly situated Artisans were not regularized, they approached this Tribunal in various O.As. for regularization of their service in 1989 wherein there was order for regularization of their services and, accordingly, subsequently the Respondents have regularized different employees undergoing Artisan Training.

(d) Since the department did not consider the period of training as regular service, the affected employees moved before this Tribunal in various O.As. in connection with grant of ACP. This Tribunal in O.A.No. 192/2010 vide order dated 22.03.2012 directed the Respondents to count the period of service of the applicant from 29.03.1988 for the

purpose of grant of ACP and to allow the applicant financial benefit under ACP thereby recognizing the period spent by the applicant as a Trainee Artisan on notional basis from 01.01.1986 and on actual basis from 01.10.1990.

(e) Being aggrieved by the said order passed in O.A. No. 192/2010, the Respondents filed W.P.(C) No. 12425/2012 before the Hon'ble High Court of Orissa. The Hon'ble High Court vide judgment dated 06.02.2013 not only dismissed the Writ Petition but also observed that the employees on being appointed as Direct Recruits were sent for training. Therefore, the period for which the opposite party was under training has to be calculated for the purpose of grant of ACP. The Railways instead of complying with the said order of the Tribunal, affirmed by the Hon'ble High Court, approached the Hon'ble Supreme Court in Special Leave to Appeal (Civil) 11010/2013. Their Lordships of the Hon'ble Apex Court after hearing both the parties, vide order dated 02.08.2013 categorically observed that they did not find any reason to interfere with the impugned order and, accordingly, dismissed the SLP. Thereafter, the Department complied with the order.

(f) Subsequently, the other similarly situated persons, who were not granted the benefit of ACP counting from training period, approached this Tribunal and as the Tribunal passed favourable order against them, Railways preferred a bunch of Writ Petitions (W.P.(C)Nos. 16565, 7958, 7961, 16965, 17482, 17484, 18035 of 2016 and 18879 and 6749 of 2015) challenging the order of this Tribunal. The Hon'ble High

Court disposed of all the bunch of Writ Petitions vide judgment dated 01.05.2017 categorically observing that the said training period is in-service training and since the applicants have been absorbed under regular establishment the said period of training has to be counted for the purpose of ACP. Hon'ble High Court have also taken into consideration earlier judgment of the Hon'ble High Court of Orissa so also the Hon'ble Apex Court.

8. The moot question that comes for consideration is when by way of catena of judicial pronouncements, similarly placed persons undergoing Artisan Training have been treated as in-service training, this Bench is not competent or empowered to take a different view and is rather bound by the aforesaid authoritative pronouncements of the Hon'ble High Court and Hon'ble Supreme Court. There is nothing left to be adjudicated in the present O.A. as the Respondents intentionally delayed the training period and there was inordinate delay in regularizing the service of the Artisan Training Holders. If there was no necessity of continuance of the training period, the Railways could have dispensed with their services but once the Railways utilized their services regularly, denying them service benefit amounts to unfair trade practice. That apart, had they been only granted stipend, the matter would have been different. Since regular increments were granted to the Trainees, it cannot be treated as a stipend as they were getting the same pay scale, which were available to regular appointees. In any view of the matter, since the Training period has to be treated as regular service for the

purpose of ACP as has already been observed in earlier judicial pronouncement, the Respondents are duty bound to honour such verdict and to grant such financial upgradation treating induction of the applicant as in service Trainee. Hence ordered.

9. O.A. is allowed. Respondents are directed to grant first financial upgradation to the applicant w.e.f. 04.04.2000 treating his induction as a Trainee as regular service. No costs.

(M. SARANGI)
Member (Admn.)

(S.K.PATTNAIK)
Member (Judl.)

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