

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 461/2012

**Present: Hon'ble Mr.Gokul Chandra Pati, Administrative Member
Hon'ble Mr.Swarup Kumar Mishra, Judicial Member**

1. Nilamani Pal, aged about 59 years
2. Kulamani Pal, aged about 57 years
3. Trilochan Pal, aged about 42 years
4. Rajkrishna Pal, aged about 43 years

All are sons of Late Babaji, S/o Late Sona, retired Track Man/Construction/Engineering/East Coast Railway, Bhubaneswar, permanent resident of Vill- Kendudhip, PO – Jakhapura, Via- Dhanagadi, PS – Jajpur, Dist. – Jajpur, Odisha.

.....Applicants.

VERSUS

1. Union of India, represented through the General Manager, East Coast Railway, E.Co.R. Sadan, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
2. Chief Administrative Officer (Con.), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
3. Sr. Personnel Officer/Con./Co-ord, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
4. FA & CAO/Con., E.Co.Rly., Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
5. Deputy Chief Engineer/Construction/East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar.

.....Respondents.

For the applicants: Mr.N.R.Routroy, counsel

For the respondents: Mr.S.P.Mohanty, counsel

Heard & reserved on : 17.12.2018

Order on : 21.12.2018

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The OA is filed under the section 19 of the Administrative Tribunals Act, 1985 by the deceased employee, seeking the following main reliefs:-

- “(I) To direct the respondents to grant 1st and 2nd financial upgradation under ACP Scheme in scale of Rs.2650-4000/- and Rs.3050-4590/- w.e.f. 1.10.1999 and revised the pay to PB-I (Rs.5200-20200/-) with GP of Rs.1900/- w.e.f. 1.1.2006.

- (II) And to pay the differential arrear salary, DCRG, Commuted Value of pension, leave salary and arrear pension with 12% interest at par with Fagu Sahoo."

After death of the employee (referred hereinafter as 'applicant' in short), his legal heirs have been substituted as parties in this OA.

2. The facts of the case in brief are that the applicant's service was regularized by the respondents against Group D post with effect from 1.04.1973. After introduction of the Assured Career Progression (in short ACP) Scheme w.e.f. 1.10.1999 by the Railway Board (Annexure A/2), the applicant was allowed 2nd financial upgradation under the ACP Scheme on 28.12.2004 with effect from 1.10.1999 to the pay scale of Rs. 2650-4000/-. Vide order dated 31.01.2005 (Annexure A/4), the Assured Career Progression (in short ACP) Scheme was extended to the Construction department employees in their promotional hierarchy subject to other conditions. Case of the applicant is that although he had rendered regular service for more than 24 years in Construction department, he was not considered for the benefit of ACP Scheme as per the promotional hierarchy applicable to him as per the circular dated 31.01.2005.

3. The applicant retired from service on 31.01.2006 and on 3.08.2011 he submitted a representation (Annexure A/11) on which no action was taken, although in the case of another similarly placed employee Sr Fagu Sahoo, the respondents allowed 2nd ACP benefit at a higher pay scale of Rs. 3050-4590/- vide order dated 17.05.2011 (Annexure A/9). The applicant, through this OA, wants similar benefit which has been allowed to Sri Fagu Sahoo.

4. The applicant filed a Misc. Application for condonation of delay, which was allowed vide order dated 24.06.2014. Respondents, in their counter affidavit averred that the applicant was regularized as Group D PCR post and he has been correctly allowed the ACP benefits. The claim for the pay scale of Rs. 3050-4590/- was resisted by the respondents on the ground that the applicant does not have the medical fitness of B-1 required for the post, as he was of C-1 category, for which the applicant was not eligible for the pay scale of Rs. 3050-

4590/-/. The case of Sri Fagu Sahoo was distinguished since he was of medical category B-1 unlike the applicant.

5. The applicant in his Rejoinder, it was mentioned that the applicant was never called for any medical test before considering his case for ACP although he was cleared for ACP benefit treating his case as C-1 category.

6. Heard learned counsels for both the parties. Applicant's counsel submitted that the facts of this case are similar to the facts of OA No. 196/2012. Hence, the applicant in this OA, being similarly placed as the applicant in OA No. 196/2012, this OA should be disposed of in the light of the OA No. 196/2012.

7. It is seen that the facts of this OA are similar to the facts in the OA No. 196/2012, in which, vide order dated 19.12.2018, it was held as under:-

"10. The issue to be decided in this case is whether the order of the Tribunal in the case of Benudhar (supra) in OA No. 225/2012, cited by the learned counsel for the applicant, will be applicable to the present OA. In OA No. 225/2012, the applicant Benudhar was allowed 1st ACP benefit w.e.f. 1.10.1999 to the pay scale of Rs. 2610-3540/- and 2nd ACP w.e.f. 1.10.1999 to the pay scale of Rs. 2650-4000/-. Grievance of the applicant in OA 225/2012 was that he was not allowed 2nd upgradation under the ACP scheme as per his promotional hierarchy as stipulated in the order dated 31.1.2005. As per this hierarchy, the applicant claimed the pay scale of Rs.3050-4590/- w.e.f. 1.10.1999. The applicant in OA No. 225/2012 was also regularised as Casual Khalasi although he was officiating as Gangman. It is seen that the facts of the OA 225/2012 are therefore, similar to the facts in the present OA 196/2012. Therefore, the order of this Tribunal dated 8.2.2016 in OA 225/2012 squarely covers the present OA.

11. Vide order dated 8.02.2016 of this Tribunal in OA No. 225/2012, it was held as under:-

"Since the issue has already been decided by this Tribunal as mentioned above, we do not feel inclined to make a departure from the view already taken under similar circumstances. Accordingly, the respondents are directed to consider the matter based upon other conditions as applicable to ACP, and if in the course of consideration, applicant is found to be eligible, he be conferred with the benefits within a period of 120 (one hundred twenty) days from the date of receipt of the order."

12. In view of above and following the order dated 8.02.2016 of this Tribunal in OA No. 225/2012, this OA is disposed of with a direction to the respondents to reconsider/review the case of the applicant with reference to other conditions as applicable to the ACP Scheme to the promotional hierarchy posts as applicable to the applicant in the light of the circular dated 31.01.2005 (Annexure A/4), after ignoring the condition of medical fitness of the applicant, if necessary. If the applicant is found to be eligible for a higher pay scale under the ACP Scheme than what was allowed to him earlier, then the consequential pensionary

benefits as per the rules, shall also be allowed to him with notional fixation of pay without any arrear salary, since the applicant had raised his grievance after his retirement from service. The OA is allowed accordingly in part. No costs."

8. In view of above and following the order of this Tribunal in OA No. 196/2012 which is based on the order dated 8.2.2016 of this Tribunal in OA No. 225/2012, this OA is disposed of with a direction to the respondents to reconsider/review the case of the deceased employee with reference to other conditions as applicable to the ACP Scheme to the promotional hierarchy posts as applicable to the deceased employee in the light of the circular dated 31.01.2005 (Annexure A/4), after ignoring the condition of his medical fitness, if necessary. If the deceased employee is found to be eligible for a higher pay scale under the ACP Scheme than what was allowed to him earlier, then the consequential pensionary benefits as per the rules, shall be allowed to his legal heirs with notional fixation of pay without any arrear salary, since grievance was raised after the retirement of the deceased employee from service. The OA is allowed accordingly in part. No costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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