

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 58 of 2013

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Hon'ble Mr.Swarup Kumar Mishra, Member (J)

Jadu, aged about 65 years, S/o Late Narayan, REtd. Tech., Grade III, O/o Dy. C.E./Con./E.Co.Rly/Khurda, at present Qr. No.55, Rail Vihar, Chandrasekharpur, Bhubaneswar, resident of At/Dandaghati, PO – Saragadamakundapur, Via – Jenapur, Dist. – Jajpur, Odisha.

.....Applicant

VERSUS

1. Union of India, represented through General Manager, E.Co.Rly., E.Co.R. Sadan, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
2. Chief Administrative Officer (Con.), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
3. Senior Personnel Officer, Con./Co-ord., East Coast Rly., Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
4. Dy. Chief Engineer/Con./E.Co.Rly., Khurda, at present Quarter No.55, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
5. FA & CAO/Con., E.Co.Rly., Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.S.Barik, counsel

Heard & reserved on : 17.12.2018

Order on : 11.1.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed the Original Application (in short OA) with the prayer for the following reliefs:-

- “(I) To quash the order of rejection dtd. 4.1.2013 under Annexure A/8;
- (II) And to direct the respondents to grant 1st financial upgradation under ACP scheme w.e.f. 1.10.1990 by extending benefit of order dtd. 5.3.2008 under Annexure A/4;
- (III) And to direct the respondents to pay the differential arrear salary from 1.10.1999 to 30.4.2007 by refixing pay in the scale of

Rs.4000-6000/- and corresponding to revision of scale of pay as per 6th Pay Commission.

- (IV) And to direct the resp. to pay the differential leave salary, DCRG, commuted value of pension and pension with 12% interest."

2. The facts, in brief, are that the applicant under the respondent-railways, was engaged as a casual Khalasi w.e.f. 4.9.1972 and was granted Temporary status w.e.f.1.1.1981. He was regularized w.e.f. 1.04.1988 against PCR Group 'D' post and then regularized as a Serang in Gr. III post w.e.f. 1.03.1998 vide the order dated 7.6.1999 (Annexure A/1) along with other employees who are similarly placed as the applicant. It is stated in the OA that the applicant was brought over to the establishment of skilled Serang Grade-III w.e.f. 1.4.1988 vide order dated 16.7.1992. However, copy of the order dated 16.7.1992 has not been enclosed by the applicant. He retired from service on 30.04.2007.

3. After introduction of the Assured Career Progression (in short ACP) Scheme w.e.f. 1.10.1999, some of the similarly placed employees were found suitable for 1st ACP benefit after 12 years of regular service and this order was cancelled subsequently by the respondents. The concerned employees challenged the cancellation order in the OA No. 660/2005 and some other OAs, which were disposed of by the Tribunal vide order dated 22.11.2007, by which, the OAs were allowed and the order of cancellation was quashed on the ground that the concerned employee was first appointed as Bridge Khalasi and there was no promotion. Another OA No. 432/2008 with similar facts was also disposed of by the Tribunal vide order dated 23.11.2009 (Annexure A/3). Similarly placed Sarang Gr-III employees also moved the Tribunal and vide order dated 5.03.2008 (Annexure A/4), their case was also allowed on the ground that the concerned employees did not avail any promotion, for which they would be entitled for 1st ACP benefits.

4. It is stated in the OA that thereafter, the applicant submitted a representation dated 9.1.2012 (Annexure A/5) enclosing copy of the order dated 5.03.2008 and 23.11.2009 of the Tribunal in similar cases, for consideration for sanction of ACP at par with other employees, who had approached the Tribunal. It is stated that as per the decision of Hon'ble Apex Court in the case of Union of India & others vs. K.C. Sharma & others reported in [1997 SCC Vol-7 page 721], it is held that the Tribunal has power to condone delay in filing the OA for extending the benefit in similar cases. The applicant had also filed the OA No. 883/2012, which was disposed of with a direction to the respondents to dispose of the applicant's representation. In compliance, the respondent No.3 passed the impugned order dated 4.01.2013 rejecting the representation of the applicant. This OA is filed challenging the order dated 4.01.2013, mainly on following grounds:-

(i) The applicant has completed service of about 22 years including regular service period and 50% of temporary service period and since he has not availed any promotion, he is entitled for first financial upgradation benefit under the ACP Scheme.

(ii) The Tribunal has decided the issue in a number of similar cases.

(iii) The respondent no.3 erroneously rejected the case of the applicant on the ground that he was promoted to the post of Skilled Artisan Gr-III without mentioning the date and order. His case was wrongly compared with the case of Sukant Moharana who is not a party to the case.

5. The respondents have filed the counter stating as under:-

"The applicant was initially engaged in S.E.Railway as daily rated Casual Khalasi w.e.f. 4.9.1972, as Casual Bridge Khalasi w.e.f. 24.7.1978, as Casual Revetter/Sarang w.e.f. 24.11.1981 under BRL.REG/S.E.Rly./KNPR. He attained temporary status w.e.f. 01.01.1981 while working as skilled Sarang Gr.III in the scale of Rs. 260-400/-. Subsequently, he was absorbed against 40%/60% PCR Gr. D Post as Khalasi in scale of Rs. 196-232/Rs.750-940/- w.e.f. 01.04.1988. Due to exigency of work he was allowed to continue to work in post of Sarang Gr.III in scale of Rs.950-1500/- on officiating basis. Further, he was regularized (promoted) as Riveter Gr.III/Sarang Gr.III in scale of Rs. 950-1500/- /Rs. 3050-4590/- w.e.f. 01.03.1998 against 60% PCR Post whose corresponding scale of Rs. 3050-4590 is GP Rs. 1900/- in 6th CPC....."

6. It is further stated in the counter that the applicant became a regular staff in Gr. D w.e.f. 01.04.1988 and subsequently, he was promoted to Revittor Gr.III/Sarang Gr.III in scale of Rs. 950-1500/- when he was regularized in Group C post w.e.f. 01.03.1998. Hence, he is not entitled for the benefit of 1st financial upgradation under the ACP Scheme as he had already availed of the first promotion from Group D to Group C post.

7. In the Rejoinder, the applicant denied the averments in the counter and stated that he was working as skilled Sarang Gr.III on officiating basis which was regularized on 1.03.1998 and he never drew the pay in any scale other than that of Sarang Grade III. It was reiterated that as per the order of the Tribunal in similar cases, the applicant is entitled for the benefit. In reply to the Rejoinder, the respondents have filed the reply to the Rejoinder, mainly reiterating the averments in the counter.

8. We have heard learned counsel for the applicant, who filed a copy of the order dated 31.01.2017 in OA No. 638/2014 in which the concerned employee is stated to be similarly placed as the present applicant. He also submitted that another similarly placed employee, Tipa who was also junior to the applicant, has been given the benefit of the ACP.

9. Learned counsel for the respondents submitted that in the impugned order dated 4.01.2013 (Annexure A/8), the reasons as to why the applicant is

not entitled for the benefit of ACP have been explained. He also reiterated the averments in the counter stating that since the applicant had availed one promotion, he is not entitled for the ACP benefit.

10. It is noticed that the applicant has cited the order of this Tribunal dated 23.11.2009 in OA No. 432/2008 (A/3) and dated 5.03.2008 in OA No. 874/2005 alongwith 5 other OAs, in which the employees in similar situation as the present applicant, were allowed the benefit of the first ACP benefit by the Tribunal. The applicant stated to have submitted his representation dated 9.01.2012 (Annexure A/5) for extending similar benefit as the employees who had got the benefit by virtue of the above orders of the Tribunal (vide para 4.7 of the OA). It is seen from the OA that the applicant did not press for his claim for the ACP benefit like the other employees who were the parties in the OAs disposed of by order dated 5.03.2008 and 23.11.2009. In fact, these employees were sanctioned the ACP benefits by the respondents which were withdrawn and the order of withdrawal of the ACP benefit was challenged in the OAs cited by the applicant vide para 4.6 of the present OA. No such benefit of ACP was sanctioned in favour of the applicant and withdrawn later on. There is nothing on record to show that the applicant had moved the authorities for sanction of the ACP benefit in his favour after sanction of the ACP benefit in the year 2003 in favour of the employees, who were parties to the OAs referred to in para 4.6 of the OA, although the applicant was very much in service in the year 2003, when it was sanctioned in favour of other employees. The applicant retired from service on 30.4.2007 (as stated in para 4.7 and 4.9 of the OA) and till that time no action was taken by the applicant to claim parity with other employees, who were sanctioned the ACP benefit. This implies that during the applicant's service period, he did not consider the case of the employees who were parties in the OAs referred to in para 4.6 of the OA to be similar as his case, as no such claim was made before the authorities before 30.4.2007.

11. After not raising his claim of the ACP benefit at par with other employees while the applicant was in service, it was necessary for the applicant to press for his claim of the ACP benefit in the light of the order of the Tribunal within a reasonable time after passing of the order dated 5.03.2008 and 23.11.2009 by the Tribunal. But as revealed from the OA, the applicant had moved his first representation in this regard on 9.01.2012, i.e. after more than two years of passing of the order dated 23.11.2009 and more than three and half years of passing of the order dated 5.03.2008. The reason for delay has not been explained in the OA, although it is stated in para 4.10 of the OA that the Tribunal has power to condone delay in such case in view of the judgment of Hon'ble Apex Court in the case of Union of India & others vs. K.C. Sharma &

others 1997 SCC Vol.-7 Page 721 and in the case of Maharaj Krishna Bhatt and another vs. State of Jammu Kashmir and others [(2008)2SCC (L&S) 783].

12. When no decision was taken on the representation dated 9.01.2012, the applicant filed OA No. 883/2012 (vide para 4.11 of the OA), which was disposed of vide order dated 5.12.2012 (Annexure A/7) with a direction to respondent no.3 to dispose of the representation of the applicant by passing a speaking order. In the order dated 5.12.2012, it was observed as under:-

"3. Having heard Ld. Counsel for the applicant, without entering into the merit of this case and without prejudice to the right of the parties, I dispose of this O.A. with direction to Respondent no.3 i.e. Sr. Personnel Officer, Con/Co-ord., E.Co. Railways, to consider and dispose of the pending representation by way of reasoned and speaking order within two months from the date of receipt of a copy of this order....."

13. It is clear from above that the Tribunal while passing the order dated 5.12.2012 did not consider the merit of the case. But in this OA since the relief sought for by the applicant is to be decided on merit, it is necessary to see if the OA has been filed within the time as stipulated under law. In this case, there is no document placed on record to show if the applicant claimed the benefit of ACP when similarly placed employees were sanctioned the ACP in the year 2003, when the applicant was in service. When the order dated 5.03.2008 and 23.11.2009 were passed in the case of other employees, the applicant did not also raise his claim within the time stipulated under section 21 of the Administrative Tribunals Act, 1985.

14. Learned counsel for the applicant has relied upon the order dated 31.01.2017 passed by this Tribunal in OA No. 638/2014 (Hira Behera vs. Union of India & others). Regarding the facts of the case in OA No. 638/2014 it was held as under:-

"2. The brief facts are that husband of applicant viz., Chakara S/o Kanhu was granted temporary status w.e.f. 1.1.1981 as a Technician Gr. III and his services for first time were regularized retrospectively w.e.f. 1.4.1988 as Technician Grade III vide order dated 16.7.1992 and, for the second time w.e.f. 1.3.1998 vide order dated 7.6.1999 in scale Rs.3050-4590 vide Annex.A/1. The Fifth Central pay Commission in its report had made certain recommendations relating to Assured Career Progression (ACP) Scheme for Central Government Civilian employees in all Ministries/Departments as safety net to deal with problems of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues."

15. It is seen from the facts of the case in OA No. 638/2014 as extracted above, the applicant was granted temporary status w.e.f. 1.1.1981 and he was regularised as Technician Gr.III in his service w.e.f. 1.4.1988 as per the order dated 16.7.1992 and w.e.f. 1.3.1998 vide order dated 7.6.1999. The applicant he was appointed as a Casual Khalasi w.e.f. 4.9.1972 and as Casual Bridge Khalasi w.e.f. 27.7.1978 and Casual Revetter/Sarang w.e.f. 24.11.1981 and he

was regularised as PCR Group 'D' in the post of Khalasi w.e.f. 1.4.1988 as mentioned in para 4 of the counter filed by the respondents, which has not been denied in the rejoinder filed by the applicant. While employee in OA No. 638/2014 was all along continuing in the Group 'C' post, and was regularised in Group 'C' post in 1988 and 1998, the applicant in the present OA was first regularised as Khalasi in Group 'D' in 1988 and was allowed to officiate against Group 'C' post of Sarang Gr.III, against which he was regularised w.e.f. 1.3.1998 vide order dated 7.6.1999 (Annexure A/1). Further, the applicant in OA No. 638/2014 had expired on 5.2.2012 as mentioned in para 5 of the order dated 31.1.2017 after which, the widow submitted the representation to the respondents on 4.3.2014. Hence, in our opinion, the facts of OA No. 638/2014 and the present OA are different, for which the decision of the Tribunal in OA No. 638/2014 cited by the learned counsel for the applicant, will not apply to the present OA.

16. It is seen that in the pleadings of the applicant no where the parity has been claimed by the applicant with the applicant of the OA No. 638/2014, since it was claimed at the time of hearing of this OA.

17. The applicant in para 4.10 of the OA has referred to the judgments of Hon'ble Apex Court in the case of Union of India & others vs. K.C. Sharma & others [1997 SCC Vol.-7 Page 721] and in the case of Maharaj Krishna Bhatt and another vs. State of Jammu Kashmir and others [(2008)2SCC (L&S) 783] to state that the delay in filing the Original Application claiming benefits allowed by virtue of the order of the Tribunal to other similarly placed employees will not be a bar. Both these cases have been discussed in the judgment of Hon'ble Apex Court in the case of **State of Uttar Pradesh & Others -vs- Arvind Kumar Srivastava & Others [JT 2014 (12) SC 94]** with the observations as under :

12. Next judgment is of the Constitution Bench judgment of this Court in the case of K.C. Sharma & Ors. v. Union of India [JT 1997 (7) SC 58 : 1997 (6) SCC 721]. In this case the Court was directly concerned with the issue of granting benefit of the earlier judgment. The Government had passed Notification dated December 05, 1988 which obviously affected the pension of retired employees, retrospectively. These persons had not challenged the said Notification within the limitation period. However, in some other case filed by similarly situated persons, a Full Bench of the Central Administrative Tribunal declared the Notification invalid vide its judgment dated December 16, 1993. After this Notification was declared invalid, the appellants also claimed the benefit of that judgment from the Railways. On Railways refusal to extend the benefit, they filed Application in the Central Administrative Tribunal in April 1994. This Application was dismissed by the Tribunal as time barred and against the judgment of the Tribunal these appellants had approached this Court. The Court, in a brief order which runs into six paragraphs, held that delay in filing the SC 100 JUDGEMENTS TODAY 2014 (12) Application should have been condoned and the appellants should have been given relief by the Tribunal on the same terms as were granted to others by the Full Bench judgment of the

12.1. Immediate comment which is called for by us to the aforesaid judgment is that there is no detailed discussion in the said order. What can be observed from the reading of this order is that the earlier judgment of the Tribunal striking down the Notification dated December 05, 1988 was treated as judgment in rem. Naturally, when the Notification itself is struck down and it was a matter of pension, benefit thereof was to be given to the others as well. It appears that for this reason the Constitution Bench observed that delay should have been condoned giving relief to the appellants also in the same terms as was granted by the Full Bench of the Tribunal.

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"23. In fairness and in view of the fact that the decision in Abdul Rashid Rather had attained finality, the State authorities ought to have gracefully accepted the decision by granting similar benefits to the

present writ petitioners. It, however, challenged the order passed by the Single Judge. The Division Bench of the High Court ought to have dismissed the letters patent appeal by affirming the order of the Single Judge. The letters patent appeal, however, was allowed by the Division Bench and the judgment and order of the learned Single Judge was set aside. In our considered view, the order passed by the learned Single Judge was legal, proper and in furtherance of justice, equity and fairness in action. The said order, therefore, deserves to be restored."

16. No doubt, the Court extended the benefit of the decision in Abdul Rashid Rather's case to the appellants. However, what needs to be kept in mind is that these appellants had not taken out legal proceedings after the judgment in Abdul Rashid Rather's case. They had approached the Court well in time when Abdul Rashid Rather had also filed the petition."

From the above observations it is clear that the facts and circumstances in both the cases cited by the applicant, the delay was not in bar on the claim of the employees concerned.

18. In the judgments in the case of Arvind Kumar Srivastava (*supra*) after examining the case laws on this issue, Hon'ble Apex Court has held as under :

"23. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) 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.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (*supra*)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said 2014 (12) Sunita Kachwaha & Ors. v. Anil Kachwaha [R. Banumathi, J.] SC 107 judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

19. The applicant has claimed the benefit of the order dated 5.3.2008 and dated 23.11.2009 of the Tribunal (copy at Annexure- A/4 & A/3 of the OA). But

as discussed in para 10 and 11 above, the applicant did not raise his claim/grievance regarding ACP benefit while he was in service and within a reasonable time after passing of the order dated 5.3.2008 and dated 23.11.2009 of this Tribunal. In the case of **C. Jacob vs. Director of Geology & others**, Hon'ble Supreme Court, after considering the issue of delay and laches in raising claims related to service, has held as under:-

"7. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

8. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action."

20. In this OA, the dispute related to non-consideration of the applicant for ACP benefit when other similarly placed employees were sanctioned ACP benefit in the year 2003 and the applicant remained silent while he was in service till 30.4.2007. Generally after retirement, an employee is not considered for upgradation or promotion unless his case was ignored earlier while considering similarly placed employees who are junior, since such consideration can give rise to claims for others who were senior to the concerned employee. As discussed earlier, the applicant did not raise his claim before his retirement on 30.4.2007 and remained silent till he submitted the representation dated 9.01.2012 i.e. after more than four years of his retirement from service and after more than two years from the date of order of the Tribunal in similar cases as discussed in para 10 and 11 of this order.

21. In view of the discussions above, we find that in this case, the applicant did not raise his claim within the time as stipulated under law and he approached the respondents for the first time with the representation dated 9.1.2012 and thereafter approached this Tribunal in OA No.883 of 2012 as discussed in paragraphs 12 and 13 of this order. Hence, we are of the considered view that the claim of the applicant is barred by the limitation and delay under Section 21 of the Administrative Tribunals Act, 1985. The OA is accordingly dismissed. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

