

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/699/2013

Date of Reserve:06.02.2019
Date of Order: 08.03.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Madhu, aged about 65 years, S/o. Late Bansi, retired Tech. (Bridge Erector) Grade-III, E.Co.Rly/Engineering/Con./Bhubaneswar – permanent resident of Vill-Dandasana, PO/Via-Jenapur, Dist-Jajpur, Odisha.

...Applicant
By the Advocate(s)-M/s.N.R.Routray
Smt.J.Pradhan

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Senior Personnel officer/Con.Co-ordn./East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Bhubaneswar, Dist-Khurda.
3. Financial Advisor & Chief Accounts Officer/Con.East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
4. Branch Manager, Central Bank of India, Purunabaulamala Branch, At-Purunabaulamala,m PO-Gadamadhupur, Dist-Jajpur, Odisha.

...Respondents

By the Advocate(s)-Mr.B.B.Pattnaik

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, applicant has prayed for the following reliefs:

- i) To quash the order of rejection dated 16.08.2013 under Annexure-A/12.
- ii) To direct the Respondents to grant 1st & 2nd financial upgradation under ACP Scheme w.e.f. 01.10.1999 & August,

2008 by extending benefit of order under Annexure-A/8 & A/9, respectively.

- iii) To direct the Respondents to pay the differential arrear salary, leave salary, DCRG, commuted value of pension and pension with 12% interest for the delayed period of payment.

2. Shorn of unnecessary details, it would suffice to note that claiming similar benefit, the applicant had approached this Tribunal in O.A.No.517 of 2013. This Tribunal vide order dated 01.08.2013 disposed of the said O.A. in the following terms:

"Taking into consideration the submissions made by the respective counsel, without going into the merit of this case, we dispose of this O.A. by directing Respondent No.2 to consider the representation dated 06.09.2012 (if any such representation has been made by the applicant and if it is still pending) in view of the orders passed by different Courts and Tribunals, if the case of the applicant is square covered with the case of the applicants who had earlier approached this Bench of the Tribunal, as per law and pass a reasoned and speaking order within sixty days from the date of receipt of this order. If, after such consideration, the applicant is found to be entitled to the benefits as claimed by him then steps may be taken for disbursement of the said amount within a further period of 90 days from the date of such consideration".

3. In compliance of the aforesaid order, the respondents passed a speaking order dated 16.8.2013(A/12) which reads as under:

"You have completed 24 years of regular service on 15.8.2008, your claim is being put up before the screening committee for scrutiny and consideration, which will depend upon your past service working report/performance of satisfactory service.

This complies with the Hon'ble CAT/CTC's order dated 1.8.2013 in O.A.No.517/2013".

4. Aggrieved with this, the applicant has approached this Tribunal seeking reliefs as aforementioned.

5. As revealed from the record, the applicant was engaged in the Railway as casual Khalasi on daily rated basis with effect from 28.1.1974 and while

working as such in the scale of Rs.196-232/-, he was granted temporary status with effect from 1.1.1981. Therefore, he was promoted purely on ad hoc (officiating) basis in the post of Bridge Khalasi in the scale of Rs.800-1150/- with effect from 24.7.1987 whereafter, he was absorbed against 40% Gr.D post in the scale of Rs.750-940/- with effect from 1.4.1988. Thereafter, the applicant's service was regularized as Bridge Khalasi in the scale of Rs.950-1500/-/2050-4590 with effect from 1.12.2001 and subsequently, he retired from service on superannuation with effect from 31.8.2008 rendering 24 years and 15 days qualifying service in the scale of Rs.3050-4590/- as Bridge Khalasi, Gr.III.

6. It is the case of the applicant that promotion during the period of casual service with temporary status is neither a promotion nor upgradation of the post of Bridge Khalasi from Semi Skilled to Skilled can be construed as a promotion in view of the decision of this Tribunal in O.A.No.660 of 2005 decided on 22.11.2007, which has also been upheld by the Hon'ble High Court of Orissa vide order dated 8.7.2008 in W.P. (C) No.7429 of 2008.

7. On the other hand, it is the case of the respondents that the applicant having been appointed/absorbed regularly against PCR Gr.D post with effect from 1.4.1988 was subsequently regularized in the higher grade Group-C post (Promotion) as Bridge Khalasi in the scale of Rs.3050-4590/- with effect from 1.12.2001 and therefore, as per the rules governing ACP, the applicant is entitled only for 2nd financial upgradation in the scale of Rs.4000-6000/- from the scale of Rs.3050-4590/- on completion of 24 years of regular service in view of the fact that he has already availed one regular promotion(regularization) as Bridge Khalasi. However, they have pointed out that the applicant's casual/ad hoc service has no relevance while granting

the benefit under the ACP Scheme as per the extant rules. In the counter, the respondents have annexed an Office Order No.99/2013 dated 26.08.2013(R/1) which reads as thus:

"In obedience to Hon'ble CAT/Cuttack's Order dt. 01.08.2013 in O.A.No.517/2013 in the matter of Sri Madhu, S/o.late Banshi, Retd. Br.Khalasi (Bridge Erector, Gr.III) vs. UOI & Others, the 2nd financial upgradation under ACP Scheme is hereby granted from scale Rs.3050-4590/- to scale Rs.4000-6000/- w.e.f. 16.08.2008 in favour of Sri Madhu, S/o. Late Banshi, Retd.Br.Khalasi. His settlement payment may please be processed accordingly".

8. Applicant has not filed any rejoinder to the counter. Heard the learned counsels for both the sides and perused the records. Applicant has not challenged the office order dated 01.08.2013(R/1) granting him the 2nd financial upgradation under the ACP Scheme in the scale of Rs.4000-6000/- with effect from 16.08.2008. However, he has placed reliance on the decision of this Tribunal in O.A.660 of 2005 as confirmed by the Hon'ble High Court of Orissa in W.P.(C) No.7429 of 2008. On a perusal of order dated 22.11.2007 of this Tribunal in O.A.No.660 of 2005, it is seen that the same had been passed based on an identical matter in O.A.No.740 of 2005. This Tribunal in Paragraph-4 in O.A.No.740 of 2005 held and directed as under:

"4. Records were called for to peruse as to the exact facts. Arguments have been heard and pleadings perused. The factual position as per the records is that the applicant's initial appointment has been indicated as "casual w.e.f. 05.12.1972. There is absolutely no indicated in the service records of his initial scale as Rs.196-232. Pay scale as per entry 14 of the First page of the service book is Rs.210-4-250-EB-5-270 and date of first appointment is indicated as "cpc 1.1.1984 – 1.1.01". Subsequent entries show that the applicant had been granted increments in 1982, 83, 84, 85 and 1986 when his pay was fixed at Rs.230/-. Thereafter, applying the revised pay scale as per the Pay Commissions recommendation, the pay of the applicant was fixed in the scale of Rs.800-1150 at Rs.890/- with the next date of increment as 01.01.1987. This scale was continued to be available to the applicant till the pay scale was revised with retrospective effect from 01.01.1986 as Rs.950-1500 when the pay was fixed at Rs.1150/- as on 01.01.1986 and replaced further by the scale of Rs.3050-4590 when the pay

was fixed at Rs.3575/- with next date of increment as 01.01.1997. Thus, there is no whisper about Rs.196-232 pay scale in the service book. The applicant has all along been treated w.e.f. 01.01.1981 as Bridge Khalasi and as such he had not been afforded any promotion. Hence, he is entitled to the ACP taking into account his temporary status with effect from 01.01.1981 and as regular from 01.04.1984. Thus, w.e.f. 09.08.1999 when ACP was introduced, the applicant shall be entitled to first financial upgradation in the scale of Rs.4000-6000/-. His entitlement to first APC ought to have been given w.e.f. 09.08.1999 in the aforesaid scale of Rs.4000-6000/- whereas he was granted the same w.e.f. 01.04.2000 and it has been treated as the second financial upgradation, whereas it is the first. Respondents are directed to verify only the period of temporary service and regular service and if the same tallies with the above, the, the applicant's case be considered for grant of ACP with effect from 9.8.1999 on the above lines. Order dated 22.06.2006 (Annexure-A.6) is hereby quashed and set aside so far as it relates to the applicant and the respondents shall work out the ACP as stated above and after adjusting the amount paid to the applicant the balance shall be payable. Suitable orders be passed within a period of two months from the date of communication of this order and arrears paid within two months thereafter".

9. Based on the above decision, this Tribunal disposed of O.A. No.660 of 2005 vide order dated 22.11.2007 in the following terms:

"2. Though records in this case have not been called for, in so far as the documents are concerned, all are the same in both the cases and identical counter has been filed. As such, in this case also, there is no question of applicant having been granted first Rs.196-232 and later promoted as Bridge Khalasi as contended by the respondents in their counter. The very first appointment in his case should, therefore, be held as Bridge Khalasi and all that happened earlier was upward revision of pay scale and as in the other OA No.740/05, this O.A. also is allowed. Respondents are directed to work out the period when the applicant completed 12 years of regular service (including 50% of temporary status) and based on the same, the APC shall be afforded to the applicant. Order dated 22.06.2005 (Annexure-A/9) is hereby quashed and set aside so far as the same related to the applicant. But the respondents shall work out the APC as stated above and after adjusting the amount paid to the applicant the balance shall be payable. His pensionary benefit shall be revised correspondingly. Suitable orders be passed within a period of two months from the date of communication of this order and arrears paid within two months thereafter".

10. We have examined the facts of the present case before us via-a-vis the facts of O.A.Nos.740 of 2005 and 660 of 2005. In our considered view, the facts of this case are quite identical to the facts of the O.A.Nos.740 and 660/2005. In this view of the matter, following the judicial precedent, this Tribunal directs the Respondents to work out the period when the applicant had completed 12 years of regular service (including 50% of temporary status) and based on the same, the benefit of ACP Scheme shall be allowed to the applicant. Respondents are directed to work out the applicant's pay after the benefit under the ACP Scheme, as stated above, and after adjusting the amount already paid to the applicant, the balance arrears shall be payable. His pensionary benefits shall be revised correspondingly. Suitable revised orders shall be passed by the Respondents within a period of two months from the date of receipt of this order and the arrears shall be drawn and disbursed to the applicant within a further period of further two months.

11. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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