

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 196 of 2012

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

Madhu, aged about 65 years, S/o Naba, Retired Track Man, O.o SSE/Head Quarter/East Coast Railway/ Rail Bihar/ Chandrasekharpur/ Bhubaneswar, Permanent resident of Vill/PO: Antia, Via Jenapur, Dist. Jajpur.

.....Applicant.
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. Senior Personnel Officer, Con./Co-ord., East Coast Rly., Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. Senior Section Engineer/Head Quarter/East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
5. FA & CAO/ Con., East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

.....Respondents.

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

For the respondents: Mr.R.N.Pal, counsel

Heard on : 10.12.2018

Order on : 19.12.2018

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 seeking the following main reliefs:-

- "(I) To quash the order under Annexure A/9 & A/10.
- (II) And 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. 01.10.1999 and pay the differential arrear salary, DCRG, Commuted value of pension, leave salary and arrear pension with 12% interest.

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice."

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. Vide order dated 31.01.2005 (Annexure A/4), the Assured Career Progression (in short ACP) Scheme was extended to the Construction department where the applicant was working. Although the applicant has rendered regular service for more than 24 years, he was not considered for the benefit of ACP Scheme.

3. After introduction of the ACP Scheme w.e.f. 1.10.1999 by the Railway Board, the applicant was allowed first financial upgradation under the ACP Scheme vide order dated 18.03.2003 with effect from 1.12.1999 (copy of this order has not been enclosed with the pleadings of the applicant) after he was selected by the screening committee for 1st financial upgradation to the pay scale of Rs. 2610-3540/- and 2nd financial upgradation to the pay scale of Rs. 2650-4000/- w.e.f. 1.10.1999. The applicant is aggrieved since he was not considered for 1st financial upgradation to Rs. 2650-4000/- and 2nd financial upgradation to the next higher scale of Rs. 3050-4590/- although he was eligible for the same as per the guidelines (as stated in para 4.6 of the OA). He was not allowed the benefits as stated above till he retired from service on 31.05.2007.

3. A detailed representation dated 30.8.2010 (Annexure A/5) was submitted to the respondent No.3 with copy to the respondent No. 2 for grant of 2nd financial upgradation to the pay scale of Rs. 3050-4590/- w.e.f. 1.12.1999. As no action was taken, the applicant submitted a reminder dated 28.2.2011 (Annexure A/6), the applicant filed the OA No. 719/2011 which was disposed of by the Tribunal vide order dated 25.10.2011 (Annexure A/8) directing the respondents to dispose of the pending representation of the applicant taking into account the order of the Tribunal in OA No. 320/2008. In compliance of the said order, the respondents have disposed of the representation of the applicant vide order dated 17.05.2011 (Annexure A/15), which has been impugned in this OA.

4. Vide order dated 31.01.2012 (Annexure A/10), the respondent no. 3 complied with the order dated 25.10.2011 of the Tribunal by rejecting the case of the applicant mainly on the following grounds:-

- (i) The applicant was allowed 1st and 2nd financial upgradation to the pay scale of Rs. 2610-3540/- and Rs. 2650-4000/- respectively w.e.f 1.10.1999, vide order dated 31.01.2012, taking into account the medical category of the applicant to be C-1.
- (ii) As per the guidelines of the Railway Board's letter dated 1.10.1999, for ACP benefits, an employee has to fulfil the norms specified for promotion like benchmark, trade test/examination, seniority-cum-fitness etc. Only the employees fulfilling these norms, are entitled for ACP benefits.
- (iii) The case of Sri Fagu Sahoo in OA No. 320/2008 is different as he was declared to be medically fit for B-1 category, for which he was allowed the pay scale of Rs. 2650-3540/- in 1st ACP and Rs. 3050-4590/- in 2nd ACP w.e.f. 1.10.1999.

5. Following grounds have been advanced by the applicant in the OA against the grounds mentioned in the impugned order dated 31.01.2012:-

- (i) A similarly placed employee i.e. Sri Fagu Sahoo was allowed the benefit of 2nd financial upgradation to the pay scale of Rs. 3050-4590/- w.e.f. 1.10.1999 vide order dated 17.05.2011 (Annexure A/15) in pursuance to the order of the Tribunal in OA No. 320/2008.
- (ii) The respondents did not refer the case of the applicant to the screening committee after issue of the order dated 31.05.2005 to reconsider the case of the applicant. The respondents have taken a false plea regarding the applicant being unfit for medical B-1 category.

6. The respondents have opposed the OA by filing the counter mainly reiterating the grounds mentioned in the impugned order as indicated in para 4 above. It is stated that the case of the applicant cannot be compared to the case of Fagu Sahoo in the OA No. 328/2008 (vide para 4 of the counter). It is also stated in para 12 of the counter that the applicant's substantive post is

Khalasi (PCR) although he was officiating at a higher post of Gangman. Hence, for the purpose of ACP, he is not entitled for upgradation from the pay scale applicable for Gangman and the applicant was correctly allowed the benefit of 1st and 2nd ACP w.e.f 1.10.1999.

7. In reply to the counter, the applicant has filed the Rejoinder stating that the applicant was never sent for medical fitness test in 2003 although he was medically tested at the time of regularization of his service. It is further stated that the cause of action arose after issue of order dated 28.12.2004 (Annexure A/11) and 31.05.2005 and the applicant's juniors were considered while ignoring the case of the applicant.

8. The learned counsel for the applicant was heard. While reiterating the averments made in the pleadings of the applicant, he cited the order dated 8.02.2016 of this Tribunal in OA No. 225/2012 in the case of Benudhar vs. Union of India & others. He claims that the case of the applicant in OA No. 225/2012 is similar to the case of the applicant and that the applicant is also entitled for similar relief as in OA No. 225/2012.

9. Learned counsel for the respondents also reiterated the pleadings in the counter and he filed a copy of the medical test report of the applicant done on 9.03.1988 showing the medical fitness of the applicant in C-1 category.

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.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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