

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 731 of 2013

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Anukuli, aged about 69 years, S/o Late Bharat, retired Bridge Erector Grade III, East Coast Railway, Bhadrak, permanent resident of Vill-Taras, PO-Marjitarpur, Via/PS-Jenapur. Dist-Jajpur, Odisha.

.....Applicant

VERSUS

1. Union of India represented through the General Manager, East Coast Railway, E.Co.R.Sadan Chandrasekharpur, Bhubaneswar, Dist.- Khurda.
2. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist.- Khurda.
3. Senior DEN/Co-ordn/ East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist.- Khurda.
4. Asst. Divisional Engineer, E.Co.Rly., Khurda Road Division, At/PO-Jatni, Dist.- Khurda.
5. Mr.Bijaya Kumar Das, Sr.DEN/Co-ordn/E.Co.Rly./Khurda Road Division, At/PO-Jatni, Dist.- Khurda.

.....Respondents.

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

For the respondents: Mr.S.K.Ojha, counsel

Heard & reserved on : 2.8.2019 Order on : 26.8.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

Following reliefs have been sought for in this OA under Section 19 of the Administrative Tribunals Act, 1985 :

- "(a) To quash the order of rejection dtd. 30.9.2013 under Annexure A/11.
- (b) And to direct the respondents to grant 1st & 2nd financial upgradation under ACP Scheme w.e.f. 1.10.1999 & May 2003 by extending benefit of order under Annexure A/5 & A/6 respectively and pay the differential arrear salary, leave salary, DCRG, commuted value of pension and pension with 12% interest for the delayed period of payment.
- (c) And to direct the respondent No.5 to pay Rs.10,000/- towards compensation.

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

And for which act of your kindness the applicants as in duty bound shall ever pray."

2. The applicant initially joined the service under the respondents as temporary Bridge Khalasi on 24.9.1970. His pay scale was revised to Rs.210-290/- w.e.f. 1.1.1973 and then to Rs.800-1150/- w.e.f. 1.12.1986. His pay scale was further upgraded w.e.f. 1.12.1984 to semi-skilled category and then to skilled category with the pay scale of Rs.950-1500/- w.e.f. 1.1.1986 and the applicant was paid the differential arrear salary. The applicant's service was regularised on 7.1.1998 vide the entries in Service Book, copy of which is at Annexure A/1 to the OA.

3. It is claimed in the OA that other similarly placed Bridge Khalasis approached the Tribunal by filing OA NO. 656/1993 for upgradation of their posts from semi-skilled to skilled and the authorities were directed to treat the Bridge Khalasis as skilled category with consequential benefits. After introduction of ACP Scheme, which was introduced to address the problem of stagnation of the employees, provision for two financial upgradations were permitted in the promotional hierarchy after completion of 12 & 24 years of regular service. It is stated in para 4.5 of the OA that the Screening Committee which was conducted on 15.9.2003 for financial upgradation under ACP Scheme, allowed grant of first financial upgradation benefit to the applicant w.e.f. 1.4.2000, fixing the pay scale of the applicant at Rs.4000-6000/- from Rs.3050-4590/-. However, vide order dated 22.6.2005 the said order for financial upgradation was cancelled.

4. The aforesaid order dated 22.6.2005 was challenged in a number of OAs and the Tribunal vide order dated 22.11.2007 (Annexure A/5) passed in OA No. 884/2005 quashed the said order dated 22.6.2005, directing the respondents to grant the financial upgradation benefit under ACP Scheme. This order was passed by the Tribunal on the ground that initial appointment of the employees was Bridge Khalasis and no promotion was given during the service career of the applicant in that OA. It is claimed in the OA (para 4.6) that the case of the applicant is squarely covered under order dated 22.11.2007 of this Tribunal in OA 884/2005, which was filed by other employees who were similarly situated as the applicant.

5. It was further stated in the OA that the order of the Tribunal in OA 884/2005 was challenged before Hon'ble High Court and the said writ petition was dismissed, confirming the order of the Tribunal. Thereafter, the respondents implemented the order of the Tribunal for concerned employees by restoring financial upgradation withdrawn vide order dated 22.6.2005 vide order dated 8.7.2008 (Annexure A/6).

6. It is further stated in the OA that the applicant retired from service w.e.f. 31.12.2004 after attaining the age of superannuation and his pensionary benefit was paid as per the scale of Rs.3050-4590/- without giving any benefit of higher pay scale allowed to similarly placed other employees on account of the ACP Scheme although his qualifying service was 25 years, 7 months and 16 days. It is the claim of the applicant that since similarly placed Bridge Khalasis like the applicant had been allowed the benefit of 1st & 2nd ACP Scheme after completion of 12 and 24 years of service, same benefit should also be extended to the applicant. In support of the OA the applicant had cited the following judgments :

- i) Union of India & Others -vs- K.C.Sharma & Others [1997 (6) SCC 721]
- ii) Maharaj Krishna Bhatt & Another -vs- State of Jammy & Kashmir & Others [(2008) 2 SCC (L&S) 783]

7. When the representation of the applicant was not considered the applicant approached this Tribunal by filing OA No. 474/2013, which was disposed of vide order dated 23.7.2013 (Annexure A/9,) directing the respondents to dispose of the representation of the applicant within 60 days. In compliance of the said order, the respondent No.3 vide order dated 30.9.2013 (Annexure A/11) considered the representation and dispose of by non-speaking order without extending the benefit to the applicant at par with other similarly placed employees in pursuance to the order of the Tribunal. The said order dated 30.9.2013 has been challenged in this OA.

8. Counter has been filed by the respondents. Regarding the facts of the case, it is stated in the counter that service of the applicant was regularised w.e.f. 7.1.1988 and he was posted in the same unit as bellow man in the pay

scale of Rs.750-950/- with pay protection, vide order dated 29.1.1988. It is stated that the applicant was subsequently promoted to the post of Khalasi Helper in the scale of Rs.800-1150/- w.e.f. 20.7.1991 and then to the post of Bridge Erector Khalasi Grade III in the pay scale of Rs.3050-4590/- w.e.f. 23.1.2004 as per their usual channel of promotion. He was functioning as such at the time of his retirement on superannuation on 31.12.2004. It is further stated that the applicant has been granted 2nd financial upgradation under ACP Scheme w.e.f. 15.5.2003, vide order dated 6.9.2013.

9. The respondents in their counter have raised the preliminary objection to the OA on the ground that the order dated 22.11.2007 (Annexure A/6) passed by the Tribunal for another employee, cannot be cited as a precedent as per the principle laid down by the Hon'ble Apex Court in the case of State Financial Corporation & Others –vs- Jagadamba Oil Mills & Others [AIR 2002 SC 834] and Union of India & Anr. –vs- Arulmpzhi Iniarasu & Others [(2011) 2 SCC (L&S) 267], in which it was held that applicability of the judgments are to be considered with reference to the facts and circumstances of each case. It is further stated that the judgments relied upon by the applicant has no application as the mode of appointment, regularisation, seniority and promotions to the higher post or grade are different in the Construction Organisation and Open Line departments of the Railways. The respondents have also referred to the following judgments in the counter :

- i) Gyana Mandir Society –vs- Asok Kumar [AIR 2010 SC 1548]
- ii) U.P.Jal Nigam –vs- Jaswant Singh [(2007) 1SCC (L&S) 500]
- iii) State of Madhya Pradesh –vs- Yogendra Srivastava [(2011) 1 SCC (L&S) 251]
- iv) State Financial Corporation & Others –vs- Jagadamba Oil Mills & Others [AIR 2002 SC 834]
- v) Union of India & Anr. –vs- Arulmpzhi Iniarasu & Others [(2011) 2 SCC (L&S) 267]
- vi) C.Jacob –vs- Director of Geology & Mining & Anr. [AIR 2009 SC 264]

10. Rejoinder has been filed stating that the promotion means shouldering higher responsibilities and higher remuneration and hence, the applicant was not promoted and he was all along continuing in the same post. It was stated that the law which was decided in case of a particular group of employees of

the Indian Railways working in Open Line, should be binding for the employees in Open Line, Construction and Workshop. He has also cited the following judgments :

- i) B.N.Nagraj –vs- State of Mysore [AIR 1996 SC 1942]
- ii) Amritlal Beri –vs- Collector of Central Excise [AIR 1975 SC 538]
- iii) Inderpal yadav –vs- Union of India & Ors. [AIR 1985 SC 648]
- iv) State of Karnataka –vs- C.Lalita [2006 SCC (L&S) 447]

11. Heard learned counsels for the applicant and the respondents. Learned counsel for the respondents handed over a copy of the service book entries of the applicant and copy of the judgment in the following cases on the issue of delay :

- i) C.Jacob –vs- Director of Geology & Mining & Anr. [AIR 2009 SC 264]
- ii) State of Uttar Pradesh & Others –vs- Arvind Kumar Srivastava & Others [2015(1) SCC (L&S) 191]

12. As stated in the OA, the applicant had been granted 1st ACP benefit w.e.f. 1.4.2000, which was cancelled by the respondents vide order dated 22.6.2005. It is stated in para 4.6 of the OA that some of the employees had challenged this order dated 22.6.2005 and the said OA was allowed by the Tribunal vide order dated 22.11.2007 in respect of OA 844/2005 (Jaladhar –vs- Union of India & Others). This order referred to the order passed in OA 740/2005 in which the impugned order dated 22.6.2006 was quashed and set aside as far as the applicant was concerned. In OA No. 844/2005, the respondents were directed to grant ACP considering the fact that there was not entry in the Service Book of the employee in support of the claim of regularisation of the employee concerned at a lower scale of Khalasi. Similar order was passed in OA No. 844/2005 vide order dated 22.11.2007, in which the impugned order was quashed and set aside and the respondents were directed to consider the benefit of ACP in favour of the applicant. There is nothing on record to show that the applicant in the present OA had also challenged after the order dated 22.6.2005 or after the order dated 2.11.2007 (Annexure A/5) was passed in respect of another employee within the stipulated time under the Administrative Tribunals Act, 1985. The reasons for not challenging the said order which affected him adversely, have not been explained in the OA. Other

employees who were similarly placed as applicant had approached the Tribunal as stated in the OA and they got the relief. The applicant has even not challenged the order dated 22.6.2005 in this OA, which shows that he has accepted this order.

13. It is also not very clear from the pleadings of the applicant if the case of the applicant is identical or similar to the case of the employees, who had been allowed relief by the Tribunal in the OAs cited in the present OA. In all those cases there were no entry in the service book in support of the contention of the Railways that they were regularised at a lower post as Khalasi although they were working as Bridge Khalasi all along. But in the case of the applicant copy of the service book at page 6 as produced by the respondents at the time of hearing, it is mentioned that the applicant was posted as Substitute Khalasi against a permanent vacancy in the lower pay scale than Bridge Erect Khalasi from 11.5.1974, although he was promoted to officiate as a stop gap manner as Bridge Erect Khalasi in the higher pay scale of Rs.210-290/- w.e.f. 11.5.1974.

14. Further, the contentions in para 2 of the Counter that the applicant was subsequently promoted to the post of Khalasi Helper and then promoted as Bridge Erect Khalasi Gr.III in the scale of pay of Rs.3050-4590/- w.e.f. 23.1.2004, have not been contradicted by the applicant in the Rejoinder, except making a bland averment that the contentions in para 2(B), (C) & (D) of the counter are false and incorrect in view of the admissions made in para 2(A). This contention in the Rejoinder cannot be taken as a contradiction of the specific averment in the Counter that the applicant was promoted as Khalasi Helper and then as Bridge Erect Khalasi. Further, in para 2(D) of the Counter, it was stated that the applicant was granted 2nd financial upgradation under ACP Scheme w.e.f. 15.5.2003 vide order dated 6.9.2013 and there is nothing mentioned in the Rejoinder to this contention. We also find that the said order dated 6.9.2013 allowing him the second ACP benefit has not been challenged by the applicant in this OA.

15. The respondents have raised the question of delay on the part of the applicant for raising this issue. This contention cannot be accepted in view of

the order dated 23.7.2013 of this Tribunal (copy at Annexure A/9), in which it is clearly stated as under :

"Misc. Application No. 503/13 filed under Section 21(3) of the A.T.Act for condonation of delay is hereby allowed."

Since delay in filing earlier OA was condoned by the Tribunal as per above order, it cannot be said that this OA is barred by limitation. The judgments cited by the learned counsel for the respondents are distinguishable since the delay had not been condoned by the Tribunal in the cited cases.

16. The applicant has also cited number of judgments in support of his case in favour of the claim he has made in the OA at par with other employees. Regarding the judgment of K.C.Sharma (supra) which dealt with the question as to whether the Tribunal should have condoned the delay in filing the application before the Tribunal claiming additional pensionary benefit at par with other employees who were allowed such benefit. This judgment is discussed in the judgment in the case of Arvind Kr. Srivastava (supra) which has been cited by learned counsel for the respondents, and in para 12.2 of the said judgment, it is observed with reference to the judgment in K.C.Sharma case as under :

"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 5.12.1998 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."

17. Most of other judgments cited by the applicant have been discussed in the judgment in the case of Arvind Kumar Sivastava (supra). The facts and circumstances of the cited judgments are distinguishable from the present OA, in which the main dispute related to the respondents' claim that the applicant was promoted prior to his retirement. In addition the claim of the respondents that the applicant was allowed the benefit of 2nd financial upgradation under ACP Scheme w.e.f. 15.5.2003 vide order dated 6.9.2013 as stated in para 2 of the counter, has not been contradicted by the applicant as discussed in para

14 of this order. Hence, facts of the present case are different and the cited judgments will not be applicable.

18. In view of the facts mentioned above and taking into account the averments of the respondents in the counter that the applicant had been allowed promotion and was allowed the benefit of 2nd financial upgradation under ACP Scheme w.e.f. 15.5.2003 vide order dated 6.9.2013, which have not been specifically contradicted by the applicant, we are of the considered view that the applicant is not entitled to any benefit of the ACP scheme as claimed in the OA. Further, the order dated 22.6.2005, by which the grant of 1st ACP benefit was cancelled by the respondents, has not been challenged in this OA. Hence, we are unable to find any justification to interfere in this matter.

18. In view of the above, the OA being devoid of merit, is dismissed with no order as to the cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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