

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA No. 490 of 2016**

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

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

Giridhari, aged about 70 years, S/o KLate Nabaghana, Retd. Trackman, Office of Deputy Chief Engineer/ Construction/ E.Co.Rly./Station Bazar/Cuttack, Odisha, permanent resident of At/PO-Mantira, 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. Chief Administrative Officer (Con.), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
3. Senior Personnel Officer, Construction/Co-ordination, E.Co. Rly., Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
4. Deputy Chief Engineer/Con./East Coast Railway, Station Bazar, Dist. – Cuttack.

.....Respondents.

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

For the respondents: Mr.D.K.Mohanty-A, counsel

Heard & reserved on : 2.4.2019

Order on : 1.5.2019

**O R D E R**

**Per Mr. Gokul Chandra Pati, Member (A)**

This OA arises out of the grievance of the applicant due to the fact that the applicant's claim for the financial upgradation under the Assured Career Progression (in short ACP) Scheme to the pay scales claimed by the applicant has been rejected by the respondents. The applicant has prayed for the following reliefs:-

- "(I) To quash the order of rejection 25/26.5.2016 under Ann. A/9.
- (II) And to direct the respondents to grant 1<sup>st</sup> and 2<sup>nd</sup> financial upgradation under ACP Scheme in scale of Rs.2650-4000/- and 3050-4590/- w.e.f. 1.10.1999 and pay the differential arrear salary, DCRG, Commuted Value of pension, leave salary and arrear pension with 12% interest for the delayed period of payment.

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 applicant as in duty bound shall every pray."

2. The applicant was initially engaged as a casual labourer under the respondents. He was granted temporary status on 1.1.1981 and was regularized w.e.f. 24.4.1988 as a PCR Khalasi, which was antedated to 1.4.1973 vide order dated 6.7.1993. Vide order dated 31.1.2005 (Annexure-A/4), the ACP Scheme was extended to the applicant's department. Since the applicant had rendered more than 24 years of regular service, his case was found suitable for ACP benefit w.e.f. 1.10.1999. Accordingly, he was allowed the benefit of upgradation under ACP Scheme to the pay scale of Rs. 2650-4000/- from 2610-3540/- w.e.f. 1.10.1999. Thereafter, the applicant retired from service on 30.6.2006.

3. On 12.7.2010, the applicant submitted a representation to the respondents for grant of 1<sup>st</sup> and 2<sup>nd</sup> ACP benefit w.e.f. 1.10.1999 in pay scale of Rs. 2650-4000/- and Rs. 3050-4590/- as per the promotional hierarchy of the department cadre of the applicant instead of to the pay scales Rs. 2610-3540 and Rs. 2650-4000/- which were allowed to him. As no reply was received, the applicant filed the OA No. 825/2010, which was disposed of vide order dated 5.9.2012 (Annexure-A/6) with direction to the respondents to consider the case of the applicant. In compliance, the respondents passed the impugned order dated 10.12.2012 (Annexure-A/7). This order was challenged by the applicant in OA No. 1071/2012, which was disposed of vide order dated 28.3.2016 (Annexure-A/8), by which the order dated 10.12.2012 was quashed and the respondents were directed to reconsider the case with certain observations. This order was complied by passing the order dated 25/26.5.2016 (Annexure-A/9), by which the respondents rejected the applicant's claim. This order has been challenged in this OA, which is the third round litigation by the applicant.

4. Counter has been filed by the respondents stating that the applicant was allowed 1<sup>st</sup> and 2<sup>nd</sup> ACP benefit to the pay scales Rs. 2610-3540/- and Rs. 2650-4000/- respectively w.e.f. 1.12.1999 vide order dated 9.5.2003. His pay was fixed and on his retirement on 30.6.2006, his settlement dues including pension was finalized as per the scale of pay Rs. 2650-4000/-. The post of Khalasi was designated as Artisan Helper-II at pay scale of Rs. 2550-3200/- vide order dated 28.12.2004 (Annexure-A/3). The next higher scale was Rs. 2650-4000/- for Artisan Helper-I. The next higher promotion post is Technician Gr.III with pay scale of Rs. 3050-4590/- from Artisan Helper-I. It was further stated that since the applicant did not qualify for the prescribed medical test for B-1 category, he will not be eligible to get the pay scale of

Technician Gr.III with pay scale of Rs. 3050-4590/- . The hierarchy shown in the order dated 28.12.2004 is meant for promotion after fulfilling the eligibility criteria prescribed for promotion.

5. The applicant filed Rejoinder, mainly reiterating the averments in the OA. The averment in the Counter that for upgradation to the pay scale of Rs. 3050-4590/- (Technician Gr.III) the applicant did not qualify the prescribed medical fitness test of category B-1, has not been specifically contradicted with the medical fitness report applicable at the time of grant of ACP. It is also stated in the Rejoinder that rejection of the case of the applicant is a violation of the order of the Tribunal.

6. We heard learned counsel for the applicant and the respondents. The question to be decided is whether the impugned order is in accordance with the order dated 28.3.2016 of the Tribunal in OA No. 1071/2012 and whether the applicant is entitled for the higher pay scale of Rs. 3050-4590 as 2<sup>nd</sup> ACP benefit w.e.f. 1.10.1999 as per the hierarchy structure applicable for the applicant.

7. The order dated 28.3.2016 directed the respondents as under:-

"22. Neither the applicant nor the respondents has made it clear regarding applicant's next higher grade in accordance with the existing hierarchy in a cadre/category of posts and/or the cadre/category carrying the scale of pay. In such a situation, it would not be proper to rush to a conclusion that 1<sup>st</sup> and 2<sup>nd</sup> financial upgradations that has already been granted to the applicant with effect from 1.10.1999 in the scale of Rs.2610-3540 and Rs.2650-4000/- are not in the next higher grade in accordance with the existing hierarchy in a cadre/category of posts.

23. As regards the contention of the respondents that as per Estt.Srl.No.288/99, seniority cum fitness is to be adjudged while granting ACP benefits and since applicant did not qualify in the prescribed medical test, i.e. B-1 category, he was not considered eligible to get 2<sup>nd</sup> ACP in scale Rs.3050-4590/-, it is to be noted that in the matter of denial of benefits under the ACP scheme on the ground of having not qualified the prescribed medical standard was the subject matter of challenge in OA No. 214 of 2012. While disposing of the said OA vide order dated 18.1.2016, this Tribunal, vide paragraphs – 16 and 17 held as under :

'16. The sole ground of rejection of the prayer of the applicant is that he did not qualify in the prescribed medical test in B-1 category. Since the admitted position is that such medical test was not conducted, the ground of rejection appears to be arbitrary,. There is no doubt that the respondents are relying upon the ground that in case of Fagu Sahu, the medical category at the time of appointment was B1 and in the case of applicant it was C1 and that applicant cannot, therefore, claim parity with the said Fagu Sahu. While we consider this submission to be fair, we still do have our reservations as to whether this submission is to be accepted in the face of clear conditions of eligibility for grant of ACP under the relevant instructions. In fact, such submission fails the test of judicial scrutiny. When it is admitted by respondents that medical

test at the point of consideration was not actually conducted, how can they submit that applicant "has not qualified in the prescribed medical test"? That being the only ground on the basis of which the prayer of the applicant was rejected, we do not find the impugned orders dt. 12.1.2012 and 18.1.2012 to be legally sustainable.

17. Ideally, the applicant should have been asked to go through a medical test for the determination of his fitness in order to consider his eligibility for ACP benefit. The applicant has however, retired on 30<sup>th</sup> June, 2007, and it is too late in the day for him to go through a medical test. However, based upon the grounds we have discussed in the foregoing paragraphs, we quash the order dt. 12.1.2012 and 18.1.2012, and remit the matter back to the respondents for reconsideration of the claim based upon other conditions as applicable to ACP, and if in the course of consideration, he is found to be eligible, to confer on the applicant the resultant benefits within a period of 120 days from the date of receipt of this order."

24. At this juncture, we would at the cost of repetition like to say that nothing is forthcoming from the pleadings of the parties as to whether or not 1<sup>st</sup> and 2<sup>nd</sup> financial upgradations already been granted to the applicant with effect from 1.10.1999 in the scale of Rs.2610-3540 and Rs.2650-4000/-, respectively, are in the next higher grade in accordance with the existing hierarchy in a cadre/category of posts, which is the rallying point to clinch the issue. In view of this, it is considered expedient to remit the matter back to the railway authorities for reconsideration of the matter in conformity with the following directions :

- i) Whether 1<sup>st</sup> and 2<sup>nd</sup> financial upgradations that has been granted to the applicant in the scale of Rs.2610-3540 and Rs.2650-4000/- respectively, with effect from 1.10.1999 are in the next higher grade in accordance with the existing hierarchy in a cadre/category of posts;
- ii) If the reconsideration on the above point turns out affirmatively, there is no need to further grant 1<sup>st</sup> and 2<sup>nd</sup> ACP in the scale of Rs.2650-4000 and 3050-4590/- with effect from 1.10.1999, as claimed by the applicant in this OA.
- iii) If the outcome of reconsideration is in the negative, then the respondents shall consider grant of 1<sup>st</sup> and 2<sup>nd</sup> ACP in the scale of Rs.2650-4000 and 3050-4590/- with effect from 1.10.1999 in favour of the applicant based upon other conditions than medical standard, as applicable to ACP scheme and in such eventuality, if he is found suitable for the same, he be granted the consequential financial benefits."

8. The impugned order dated 25/26.5.2016 (A/9) stated as under:-

"In obedience to Hon'ble CAT/Cuttack's order dt. 28.3.2016 in OA No. 1071/2012, the undersigned, being respondent No.3, has gone through your service records and passed the following orders :

On verification of your service records, it is observed that you were initially engaged in the Railways as Khalasi on daily rated casual basis w.e.f. 4.1.1972 under PWI/Con/S.E.Railway/Cuttack and granted Ty. Status w.e.f. 1.1.1981 while working as casual Gangman in scale Rs.200-250/- / Rs.2610-3540/-. Your casual service was regularised and you were absorbed in the post of PCR Khalasi in scale Rs.2550-3200/- w.e.f. 24.4.1988 and the same regularisation against Khalasi post was also antedated to 1.4.1973 vide SPM/CTC's letter No. SPM/CTC/E/PCR/05/1/450 dated 6.7.1993.

Based on your service records and extant rules/procedure for grant of financial upgradation under ACP Scheme, you were granted 1<sup>st</sup> financial upgradation under ACP Scheme in the next higher scale of Rs.2550-3200/- i.e. Rs.2610-3540/- and further granted 2<sup>nd</sup> financial upgradation under ACP Scheme in the subsequent higher scale of Rs.2610-3540/- i.e. Rs.2650-4000/- w.e.f. 1.12.1999 vide Dy. CPO/BBS' office order No. 40/2003 dated 9.5.2003. Accordingly, your pay was re-fixed in these two higher grades and progressed. Thereafter consequent upon your retirement from Railway service w.e.f. 30.6.2006 after rendering 24 years of regular service, all your settlement payments including pension were paid to you in the last higher scale Rs.2650-4000.

Hence, the 1<sup>st</sup> and 2<sup>nd</sup> financial upgradations already granted to you under ACP Scheme in the scales of Rs.2610-3540/- and Rs.2650-4000/- respectively, w.e.f. 1.12.1999 were in the ext higher grades in accordance with the existing hierarchy in cadre/category of posts.

Therefore, your claim for grant of 1<sup>st</sup> and 2<sup>nd</sup> financial upgradations under ACP Scheme in the scale of Rs.2650-4000/- and Rs.3050-4590/- respectively w.e.f. 1.10.1999 is regretted.

This complies with Hon'ble CAT/Cuttack's order dated 28.3.2016 in OA No. 1071/2012.

Please acknowledge the receipt."

9. It is seen from the impugned order dated 25/26.5.2016 as extracted above that the pay scales at which the applicant was allowed the ACP upgradation benefit are stated to be the next higher grade of the pay. In the para 8 of the Counter, it is stated that these pay scales are in accordance with the existing hierarchy in cadre/category of posts. It is noticed that the applicant has mentioned in the OA that he was regularized as PCR Khalasi. Nothing has been furnished by the applicant that he was in a department in which the hierarchy of posts in the scale of pay Rs. 3050-4590/- was there for 2<sup>nd</sup> ACP upgradation or the applicant's designation was changed as per the order dated 28.12.2004 (Annexure A/3). The applicant has furnished the copy of the letter dated 28.12.2004 (Annexure-A/3) and 31.1.2005 (Annexure-A/4). Whether the applicant was allowed the benefit of the letters at Annexure-A/3 and A/4 of the OA has not been mentioned in the OA or the Counter. In para 22 of the order dated 28.3.2016 of this Tribunal, it is mentioned that neither of the parties clearly mentioned about the hierarchy applicable for the applicant. In this OA also, it has not been clearly mentioned by the applicant. On the other hand, the respondents have stated in para 8 of the Counter that the pay scales allowed to the applicant under ACP, were as per the hierarchy in cadre, which has not been contradicted by the applicant in the OA.

10. It is also noted that there is nothing on record to show that the applicant, after sanction of the ACP benefit vide order dated 9.5.2003 and any time before his retirement on 30.6.2006, had objected to the ACP benefit granted to him at pay scale of Rs. 2650-4000/- by submitting a representation. As per the OA, the first representation submitted by the applicant was on

12.7.2010 as stated in para 4.7 of the OA. Copy of this representation has not been furnished by the applicant with the pleadings to examine if the prayer made in this OA was mentioned in the representation dated 12.7.2010. The applicant had accepted the pay scale of Rs. 2650-4000/- under ACP Scheme after it was sanctioned on 9.5.2003 and did not object to it till 12.7.2010, when he submitted the representation as stated in the OA. His retirement benefits including pension were also finalized based on this pay scale and it was not objected by the applicant. The reasons for not raising the grievance any time after the ACP benefit was granted vide order dated 9.5.2003 and before 30.6.2006, have not been furnished by the applicant in his pleadings.

11. In view of the above facts, we are of the view that the applicant has failed to furnish adequate justifications to call for any interference of this Tribunal in the matter. The OA is accordingly dismissed. No costs.

(SWARUP KUMAR MISHRA)  
MEMBER (J)

(GOKUL CHANDRA PATI)  
MEMBER (A)

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