

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

OA No. 198 of 2013

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

1. Chandan Barik, aged about 25 years, Grandson of Late Murali,
2. Prasanna Barik, aged about 23 years, Grandson of Late Murali,
3. Rajesh Barik, aged about 20 years, Grandson of Late Murali,

At present residing at Vill.- Hetagadia, P.S.-Jajpur Road, Tahasil-Danagadi, Dist:Jajpur, Odisha.

...Applicants

-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. Sr. Personnel Officer, Con./Co-ord, East Coast Rly, RailVihar, Chandrasekharpur, Bhubaneswar, Dist.Khurda.
4. Sr. Divisional Financial Manager, East Coast Railway, Khurda Road Division, At/P.O.-Jatni, Dist.-Khurda.
5. Financial Advisor & Chief Accounts Officer/Con., E.Co. Rly., Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

.....Respondents

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

For the respondents: Mr. A. Mohanty, Counsel

Heard & reserved on : 06.09.2019

Order on : 17.10.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A) :-

This OA was originally filed by Murali (referred hereinafter as 'applicant'), who was an employee under the respondents, with the prayer for the reliefs:-

“I). To quash the order of rejection dated 09.02.2012 under Annexure-A/11;

II) And to direct the respondent to grant 1st & 2nd financial up-gradation w.e.f. 1.10.1999 in scale of Rs.2650-4000/- and Rs.3050-4590/- under ACP Scheme.

III) And pay the differential arrear salary, leave salary, DCRG, commuted value of pension and pension with 12% interest.

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

During pendency of the OA, the applicant expired after which his three grandsons were substituted as legal heirs vide order dated 18.7.2019 of this Tribunal on MA Nos. 510/19 and 511/19 in this O.A.

2. The facts in brief are that the applicant was initially appointed as casual Khalasi under the respondent-railways in 1965 and he was granted temporary status w.e.f. 1.1.1981 in the pay scale of Rs. 191-232/-. His services were regularized w.e.f. 1.4.1988, which was antedated to 1.4.1973 vide order dated 6.7.1993 (Annexure-A/1). Then the Assured Career Progression Scheme (in short 'ACS Scheme') was launched by the respondents w.e.f. 1.10.1999 vide order dated 1.10.1999 (Annexure-A/2). As per the ACP Scheme, an employee after completion of 12/24 years of regular service will be entitled for first/second financial upgradation in case of stagnation in service without promotion, subject to fulfilment of all the criteria for promotion. The respondents have taken a stand that for a Khalasi, redesignated as Artisan Helper-II/Artisan Helper-I with scale of pay of Rs. 2550-3200/- and Rs. 2650-4000/- respectively and the applicant being regularized as Artisan Helper-II, will be entitled for the next hierarchy pay scale of Rs. 2650-4000/- under upgradation under the ACP. The respondents allowed the benefit of first and second financial upgradation benefits under the ACP Scheme w.e.f. 1.12.1999 to the pay scale of Rs. 2650-4000/-. Thereafter, the applicant retired from service on 30.6.2007 and the Pension Payment Order (in short PPO) of the applicant showed the last pay scale of Rs. 2650-4000/- drawn by him and the pension and other retirement benefits of the applicant was settled with the said pay scale.

3. Thereafter, on 30.8.2010, the applicant submitted a representation to the respondents claiming the second ACP benefit at a higher pay scale of Rs. 3050-4590/- in place of the pay scale Rs. 2650-4000/- allowed by the respondents earlier. The ground advanced in the OA are that in a similar case of another employee Fagu Sahu who had filed the OA No. 320/2008, Sri Sahu was allowed the higher pay scale as prayed by the applicant in OA No. 320/2008. On the same ground, the applicant had submitted a representation dated 14.3.2011 (Annexure-A/8). He had also filed the OA No. 576/2011, which was disposed of with a direction to the respondents to consider and dispose of the representation of the applicant dated 14.3.2011. In compliance of the order of the Tribunal, the respondents have passed the impugned order dated 9.2.2012 (Annexure-A/11) rejecting the representation of the applicant on the ground that the case of Fagu Sahu was different since he was allowed the higher pay scale of Rs. 3050-4590/-

since he was regularized with medical fitness of B-1, as against the medical fitness of C-2 in the case of the applicant.

4. The applicant has averred in the OA that no medical check up was done by the respondents while granting the ACP benefits and hence, the question of medical fitness was false. It is further stated that even for the post of Chowkidar, the applicant was eligible for the pay scale of Rs. 2650-4000/- for 1st ACP and the pay scale of Rs. 2750-4400/- for 2nd ACP benefit as per the order dated 26.12.2004 (Annexure-A/3), which was not allowed to him.

5. The Counter filed by the respondents opposed the OA stating that the applicant was regularized against the post of PCR Chowkidar being declared medically fit for C-2 category. It is stated that he was allowed 1st ACP benefit in the pay scale of Rs. 2510-3540/- and 2nd ACP benefit in the pay scale of Rs. 2650-4000/- w.e.f. 1.12.1999 as per the hierarchy of scale as applicable for Chowkidar. Regarding the case of Fagu Sahu, it is stated in the Counter that Fagu Sahu was regularized as PCR Khalasi, where as the applicant was regularized as PCR Chowkidar, for which, it was stated that the case of the applicant is different from that of Fagu Sahu. It is also stated that the medical category of fitness was different for the applicant and for Fagu Sahu. Finally, it is stated that the applicant has been correctly granted the benefit of financial upgradation under the ACP Scheme.

6. The Rejoinder has been filed by the applicant, denying the contentions in the Counter about the medical fitness of Fagu Sahu and the applicant. It was also averred in the Rejoinder that as Chowkidar, he was at least entitled for the pay scale of Rs. 2750-4400/- as 2nd ACP benefit as per the order dated 28.12.2004 (Annexure-A/3).

7. Heard learned counsel for the applicant who submitted that as per the bio-data of the applicant filed by the counsel for the Railways in his Memo dated 19.7.2018, it has been stated that the applicant was appointed as Chowkidar Watchman-III at the pay scale of Rs. 2610-3540/-. The pay scale of the next higher post in the hierarchy i.e. for Chowkidar Watchman-II is shown to be Rs. 2650-4000/- and the next higher post has been shown to be Chowkidar Watchman-I with pay scale of Rs. 2750-4400/-. He submitted that this information shows that the applicant would be entitled for the pay scale applicable for the post of Chowkidar Watchman-I as stated in the Memo. But he stated that the applicant's claim is that he was

regularized as Khalasi Helper like Fagu Sahu and as per the hierarchy of the posts for Khalsi Helper as stated in the letter dated 28.12.2004 (A/3) is Rs. 3050-4500/- as 2nd ACP benefit at par with the benefit allowed in favour of Fagu Sahu. He further submitted that as per the letter dated 31.1.2005 (Annexure-A/4) applicable for the employees under the Construction department, information relating to the staffs in service but granted the ACP benefit at a lower scale, was to be sent to the respondent no.2. But still the case of the applicant for grant of higher pay scale under ACP was not considered by the respondents.

8. Learned counsel for the respondents was heard. Reiterating the stands in the Counter, he submitted that the case of the applicant was different from the case of Fagu Sahu and that he has been correctly given the benefit under the ACP Scheme. It was also submitted by him that the impugned order at Annexure-A/11 has explained the reasons for rejecting the case of the applicant and that the applicant who was regularized as PCR Chowkidar, was not entitled for the post of Technician Gr.-III with pay scale Rs. 3050-4500/-.

9. Having regard to the submissions by both the parties in this case, we need to decide whether the applicant's claim for the pay scale of Rs. 3050-4500/- for his 2nd ACP benefit has any merit. One of the ground advanced by the applicant is that another employee under similar situation had filed the OA No. 320/2008 and the Tribunal allowed his claim for the same pay scale, which was allowed by the respondents while implementing the said order. The respondents, in their Counter, have stated that Fagu Sahu was regularized as PCR Khalasi, where as the applicant was regularized as PCR Chowkidar. This contention of the respondents in the Counter has not been contradicted in the Rejoinder filed by the applicant. It is also stated in the Rejoinder that the applicant's designation is Store Watchman as stated in the PPO. It is noticed that no document has been furnished by the applicant to prove that his case was similar to that of Fagu Sahu in the context of the averments in the Counter in this regard. The order at Annexure-A/1 mentions that regularization of the services of the applicant and of Fagu Sahu against Group-D posts would be effective from 1.4.1973. This document does not show the Group-D posts for which the applicant and Fagu Sahu were regularized initially. Hence, we are unable to accept the contention of the applicant that his case was similar to the case of Fagu Sahu.

10. Another point mentioned in the Rejoinder is as under:-

“Moreover, for the shake of argument if the applicant is Chowkidar then also he should be placed in scale of Rs. 2650-4000/- as 1st ACP and Rs. 2750-4400/- as 2nd ACP as clarified vide order dtd. 28.12.2004 by the CPO/E.Co. Rly/BBS under Annexure-A/3.”

Same averment has also been made by the applicant in para 4.14 of the OA, which has not been specifically contradicted by the respondents in their Counter. The respondents have not furnished any reason in the Counter as to why the applicant, who was absorbed as Chowkidar Watchman-III, was not allowed 1st ACP in the pay scale of 2650-4000/- and 2nd ACP benefit in the pay scale of Rs. 2750-4400/- as clarified in the letter dated 28.12.2004 (Annexure-A/3).

11. In view of the discussions above, we are of the view that although the applicant was not eligible for the pay scale of Rs. 3050-4500/- at par with Fagu Sahu as contended in the Counter, but his case deserves consideration as per the letter dated 28.12.2004 (Annexure-A/3 of the OA). Hence, the impugned order dated 9.2.2012 (Annexure-A/11) is set aside and the matter is remitted to the respondent no.2/competent authority to reconsider the case of the late applicant for grant of pay scales of Rs. 2650-4000/- and Rs. 2750-4400/- as 1st and 2nd ACP benefit respectively to the applicant in accordance with the law keeping in mind the letter dated 28.12.2004 (Annexure-A/3) and communicate the decision in the matter through a speaking order within four months from the date of receipt of a copy of this order. It is made clear that if the late applicant is found eligible for higher pay scale under ACP Scheme as above, then all the consequential benefits except the arrear salary will be payable to the legal heirs of the late applicant, taking into consideration the fact that the applicant did not raise his claim for higher pay scale under the ACP Scheme prior to 30.08.2010 and such benefits are to be disbursed within six months from the date of receipt of a copy of this order.

12. The OA is allowed as above with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

