

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA 260/00485 of 2021

Reserved on: 08.11.2023

Pronounced on : 15.11.2023

CORAM:

HON'BLE MR. PRAMOD KUMAR DAS, MEMBER (A)
HON'BLE MR. RAJNISH KUMAR RAI, MEMBER (J)

1. East Coast Railway Engineers Association, represented through its General Secretary Er. Bishnu Prasad Dash, aged about 49 years, Son of Paramananda Dash, at present working as Senior Section Engineer (Bridge/ Con.), East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist.- Khurda-751017.

2. Malaya Kumar Dash, aged about 46 years, Son of Late Dhirendranath Dash, at present working as Senior Section Engineer (S&T), East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist. Khurda-751017.

3. Ram Nath Bhoi, aged about 49 years, Son of Damodar Bhoi, at present working as Senior Section Engineer (Electrical), East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist. Khurda-751017.

4. Abhaya Kumar Sutar, aged about 55 years, Son of Akshaya Kumar Sutar, at present working as Senior Section Engineer (Electrical), East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist.- Khurda-751017.

5. Narendra Kumar Behera, aged about 50 years, Son of Late Sribatchha Behera, at present working as Junior Engineer (Electrical), East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist.- Khurda-751017.



6. Tarun Kumar Prusty, aged about 43 years, Son of Late Balaram Prusty, At present working Senior Section Engineer (Drawing), East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist.- Khurda-751017.

7. Santosh Kumar Dalabehera, aged about 43 years, Son of Khetrabasi Dalabehera, At present working as Junior Engineer (Works), East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist.- Khurda-751017.

8. Durga Prasad Sahoo, aged about 48 years, Son of Late Sridhar Kumar Sahoo, at present working as Senior Section Engineer (Mech.), East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist.- Khurda-751017.

.....Applicants

VERSUS

1. Union of India, represented through the General Manager, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist. Khurda-751017.

2. Principal Chief Personnel Officer, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist. Khurda- 751017.

3. Secretary, Railway Board, Rail Bhawan, New Delhi-110001.

.....Respondents

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

For the respondents : Mr. B.Nayak, Counsel

O R D E R

PRAMOD KUMAR DAS, MEMBER (A):

Instead of going into tit bit of the whole matter, it would suffice to state that the grievance of the applicants in this OA is against the order of rejection



dated 18.08.2021 (A/17) in denying the claim of the applicants to count the qualifying period of service for the purpose of granting them financial upgradation under MACP Scheme w.e.f. their respective dates of training before being appointed after successful completion of training in the posts against which they were selected through Railway Recruitment Board. In this OA, their prayer is to quash the said order of rejection dated 18.08.2021 (A/17), to direct the respondents to compute the in-service/post-appointment training period as qualifying service for grant of financial upgradation under MACP Scheme for Junior Engineers and Senior Section Engineers of E.Co.Rly., to antedate the financial upgradations granted to them under MACP Scheme and to pay the differential arrear salary.



Respondent have filed their counter contesting the case of the applicant and the applicant has also filed rejoinder but we feel no necessity to record all those submission in view of the settled position of law for counting the period of qualifying service from the date when a candidate after being selected joined in the training and not from the date of regular appointment after being successful in the training.

It is profitable to place reliance on the decision of this Tribunal in OA No. 192/2010 (**Chittaranjan Mohanty Vs UOI &Ors.** disposed of on

22.03.2012) upheld by the Hon'ble High Court of Orissa vide order dated 06.02.2013 in W.P(C) No. 12425/2012 and by the Hon'ble Apex Court vide order dated 02.08.2013 in SLP No. 11040/2013. Subsequently, in OA No. 924/2013 (**Parsuram Nayak Vs UOI &Ors.** disposed of on 07.04.2016) has also been upheld by the Hon'ble High Court of Orissa vide order dated 08.03.2017 in W.P(C) No. 19250/2016 and by the Hon'ble Apex Court vide order dated 15.09.2017 in SLP/Diary No. 23168/2017. The relevant portion of the order of this Tribunal in OA 192/2010 is as under:



"6. This was objected to by Learned Counsel for the Applicant on the ground that the applicant was appointed as Trainee Artisan in a particular scale of pay (Rs.950-1500/-). He has been granted annual increment since 29.03.1988 and, as such the period of service from 1988 onwards should be reckoned for the purpose of counting reckonable service for grant of ACP. Although the applicant was appointed as Trainee Artisan on a stipend of Rs.950/-, subsequently vide order under Annexure-A/1 dated 03-09-1991 he was allowed the scale of pay of Rs 950-1500/- from the date of the order. During the course of hearing, Learned Standing Counsel for the Respondents produced before us the service sheet of the applicant. On perusal of this document it reveals that increment has been granted to the applicant on Annual basis w.e.f. 29.03.1988 in terms of Establishment 9rl. No.109/92 and his pay was accordingly refixed. We have perused the Estt. Srl. No. 109/92 whereunder the Railway have decided that the period of training will be treated as duty for the purpose of grant of increments to those railway servants who have undergone such training on or after 01-01-1986. It has further been provided therein (Estt. Srl. No.109/92) that the benefit of counting the period for pay will be admissible on-notional basis from 1.1.1986 and on actual basis from 01-10-1990. In view of

the above the contention of the Respondents that the period spent by the applicant a Trainee Artisan and hence is not reckonable for the purpose of ACP cannot be accepted. Since the period from 1988 onwards has been treated as duty and pay has been refixed allowing annual increments though on notional basis, there cannot be any ambiguity on the issue that the said period of service cannot be taken into account for the purpose of reckonable service for grant of ACP.

7 As far as the contention of the Respondents' counsel that this case being covered by the order of this Tribunal in OA No. 190/10, can be disposed of by leaving the matter to the authorities to examine the case of the applicant, as directed in the aforesaid OA, we do not find justifiable reason to do so because in the earlier OA, we had no occasion to peruse the Estt. Sl. No. 109/92 and the service sheet of the said applicant while passing order in OA No. 190/10.

8 In view of the discussions made above, the order of rejection at Annexure-A/7 cannot be held to be justified and the same is accordingly quashed. The Respondents are hereby directed to count the period of service of the applicant from 29.3.1988 for the purpose of grant of ACP and allow the applicant financial benefits under ACP if he fulfills the other conditions required for grant of financial up-gradation under ACP. Respondents are further directed to complete the entire exercise within a period of 90 days from the date of receipt of copy of this order."

6. The Hon'ble High Court of Orissa in W.P.(C) No. 19250/2016 (UOI &Ors. Vs. Parsuram Nayak) observed as under:

"In this writ petition, the petitioners, i.e. East Coast Railway and its functionaries have challenged the order dated 07.04.2016 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 924 of 2013, wherein the Tribunal had directed the present petitioners to calculate the period



undergone towards training while granting 1st financial up-gradation.

Present opposite party no. entered to the Railway Service on 30.03.1988 as a Skilled Artisan/Welder Grade-III. Thereafter he was sent for in-service training. While continuing as such, since he completed 12 years of qualifying service on 29.03.2000 and the benefit of 1st financial upgradation was not extended in his favour, he preferred O.A. No. 720 of 2013. The said Original Application was disposed of directing the railways to take a decision on the representation of the applicant. The same was rejected by the railways vide order dated 25.11.2013 on the ground that since the applicant was regularized as Tech. Gr-III (Welder) with effect from 04.09.1997, therefore, 12 year is to be counted from 04.09.1997 and period from 30.03.1988 to 03.09.1997 is to be counted towards training. The said order dated 25.11.2013 was challenged by the applicant in O.A. No. 921 of 2013,




The Tribunal while disposing O.A. No. 924 of 2013 taken into consideration of the fact that such an issue has no longer res-integra in view of the decision in OA. No. 192 of 2010, which was confirmed by this Court in W.P.(C) No. 12425 of 2012 and by the Apex Court in SLP No. 11040 of 2013. The Tribunal therefore quashed the order of rejection dated 25.11.2013 and directed the respondents to grant 1st financial upgradation with effect from 29.03.2000 with the consequential financial benefits in favour of the applicant.

Since the issue has already been settled by the Apex Court and basing on that, the impugned order was passed, we do not find any illegality or irregularity in the impugned order to be interfered with."

7. Hon'ble High Court in another similar matters, i.e. W.P (C) No. 16565 of 2016 and other batch case (**Union of India vrs Bhagaban Mishra**) vide order dated 01.05.2017 while dismissing the writ petition had held:

"On the basis of the admitted position that the opposition parties - applicants have been appointed in pursuance to the advertisement No. M8/476/MCS/R&S, as such there is no dispute about the fact that they have been appointed after getting either ITI certificate or apprenticeship certificate under the Apprenticeship Act, 1961 and got their engagement in pursuance to the said advertisement as trainees and on successful training they have been taken under regular establishment on different dates, as such we are not in hesitation to hold on the basis of this factual aspect which has been placed before us that the said training period is **in service training**."



It is not res integra/ that in service training period would not be counted for counting the length of service, learned Sr. Counsel for the East Coast Railway has submitted that it is the pre service training as has been obtained by them under the Apprenticeship Act, 1961, this argument is not acceptable to us in the view of the admitted position in the case that the applicants have been appointed in pursuance to the advertisement No. M8/476/MCS/R&S which requires minimum qualification to have ITI or the certificate of apprenticeship, hence we are of the considered view that the training obtained by them is during service period and as such the said period would not in any stretch of imagination not be counted for the purpose of counting the length of period of service."

The SLP No. 28896/2019 filed by the respondents challenging the above order of Hon'ble High Court was dismissed by Hon'ble Apex Court vide order dated 22.10.2019 with the following observations:

"We find no ground to interfere with the impugned order (s) passed by the High Court on the ground that the petitioners were given the regular pay scale and the increments were also given to them right from day one. Even during the training period, increments were given to them. We have considered the policy pertaining to ACP. On perusal of the same, we find no ground to deny the benefit of training period, which was after appointment.

The Special leave petitions are, accordingly, dismissed."

8. The decision of the Hon'ble High Court of Orissa in W.P.(C) 27118/2021 dated 06.12.2022, so far as delay is concerned, reads as under:

"This matter is taken up through hybrid mode.

2. Heard Mr. N.R.Routray, learned counsel appearing for the petitioner and Mr. J. Nayak, Central Government Counsel appearing for the Union of India-opposite parties.

3. The petitioner has filed this writ petition challenging the order dated 17.03.2021 under Annexure-2 series in M.A. No.922 of 2019 (arising out of O.A. No.556 of 2018), by which the Central Administrative Tribunal, Cuttack Bench, Cuttack has rejected the claim of the petitioner for grant of benefit of ACP on the ground of delay and laches, and further seeks to issue direction to the opposite parties to grant 1st financial upgradation w.e.f., 03.04.2000 under ACP Scheme with all consequential and financial benefits.

4. Mr. N.R.Routray, learned counsel appearing for the petitioner contended that the Tribunal, vide order dated 20.03.2018 in O.A. No.260/00321 of 2014 (Girish Chandra Kabat vs. Union of India and others) allowed the benefit of ACP. Against the said order, the Union of India had approached this Court by filing W.P.(C) no.13677 of 2018 and this Court after due adjudication, vide order dated 20.07.2022, dismissed the said writ petition, relying upon the order passed by the Apex Court in SLP(C) no.11040 of 2013. Therefore, the rejection of the claim of the petitioner by the



Tribunal on the ground of delay and laches cannot be sustained in the eye of law. It is further contended that there is continuity of cause of action for the petitioner to claim the benefit of ACP.

5. Mr. J. Nayak, learned Central Government Counsel appearing for the Union of India-opposite parties admits the fact that this Court dismissed W.P.(C) No.13677 of 2018 filed by the Union of India relying upon the order passed by the Apex Court in SLP(C) No.11040 of 2013.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that since the claim of the petitioner for grant of ACP has been adjudicated on merits and the decision of this Court has been confirmed by the Apex Court in SLP(C) No.11040 of 2013, there is no valid and justifiable reason on the part of the Central Administrative Tribunal, Cuttack Bench, Cuttack to reject the claim of the petitioner on the ground of delay and laches.

7. In the above view of the matter this Court disposes of this writ petition on the basis of the observations made in Paragraph-4 of the order dated 20.07.2022 passed in W.P.(C) No.13677 of 2018, which are extracted below.



"4. On a perusal of the impugned order, it is seen that learned Tribunal has passed the impugned order relying upon the decision in O.A. No.192 of 2019, which has been confirmed by this Court in W.P.(C) No.12425 of 2012 and also by the apex Court in SLP(C) No.11040 of 2013. The operating portion of the impugned order is extracted hereunder:

5. The above point has already been settled by the decision of this Tribunal dated 22.03.2012 in O.A. No.192 of 2010 as the same has been upheld by the Hon'ble High Court vide order dated 06.02.2013 in W.P.C. No.12425 of 2012 and thereafter, the matter on being appealed of in SLP(C) No.11040 of 2013, the Hon'ble Supreme Court dismissed the same vide order dated 02.08.2013. Following the above decision, this Tribunal, later on also



granted similar relief to the applicant in O.A. No.41 of 2011. Therefore, in our considered views, the point in issue being set at rest, we have to hesitation to hold that the period spent under training till the date of regularization of his service is reckonable for the purpose of grant of 1st financial upgradation under the ACP Scheme. Accordingly, we quash the impugned order dated 09.01.2014 (A/8) and direct the respondent-Railways to reconsider the claim of the applicant for grant of 1st ACP on completion of 12 years service from 08.04.1988, by conducting a review Screening Committee meeting and subject to fulfillment of other conditions, he be so granted with consequential financial benefits."

8. Accordingly, the order dated 17.03.2021 passed by the Tribunal in M.A. No.922 of 2019 (arising out of O.A. No.556 of 2018) rejecting the claim of the petitioner is hereby quashed and the opposite parties are directed to grant ACP in favour of the petitioner, as due and admissible to him, within a period of four months from the date of receipt of this order.

9. Issue urgent certified copies as per rules."

9. In view of the settled law, quoted above, it is held that the applicant is entitled to count their qualifying service for the purpose of financial upgradation under MACP w.e.f. their respective dates of joining in the training after being qualified through RRB and joining in the post on their successful completion of training. Accordingly, the impugned order of rejection dated 18.08.2021 (A/17) is hereby quashed and the respondents are directed to revisit the grant of financial upgradation under MACP by counting the qualifying period of 10, 20 and 30 years from their initial date of joining and,

accordingly, fix their pay as per rules and pay them the differential amount within a period of 180 days from the date of receipt of a copy of this order.

10. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.



Sd/-
(Rajnish Kumar Rai)
Member (Judl.)

Sd/-
(Pramod Kumar Das)
Member (Admn.)

सत्य प्रतिलिपि
TRUE COPY

Ashu
12-11-23
अनुभाग अधिकारी (न्यायिक)
Section Officer (Judicial)
प्रशासनिक अधिकरण, कटक न्यायपीठ, कटक
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

RK/PS