

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2261 of 2017

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1. The Union of India through the Secretary, Ministry of Railway Board, Government of India, New Delhi.
 2. The Financial Commissioner, Ministry of Railway Board, Government of India, New Delhi.
 3. The General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
 4. The Financial Advisor and Chief Accounts Officer, East-Central Railway, Hajipur, District- Vaishali (Bihar).
 5. The Senior Divisional Financial Manager, East-Central Railway, Danapur, District- Patna.

.... Petitioner/s

Versus

Binit Kumar Verma, Son of Late Harishankar Prasad Verma, ex-accounts assistant, office of Senior Divisional Financial Manager, East- Central Railway, Danapur, Resident of Flat No.- 101, Rajeshwari Enclave, Rajeshwari Path, East Gola Road, District- Patna- 801503.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Devendra Kumar Sinha, Sr. Advocate Mr. Amaresh Kumar Sinha, Advocate
For the Respondent/s	:	Mr. M.P. Dixit, Advocate Mr. S.K. Dixit, Advocate Mr. Sanjay Kumar Choubey, Advocate Mr. Sunil Kumar, Advocate Mr. Shailendra Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 15-05-2017

Heard learned senior counsel for the petitioners and
counsel for the private respondent.

2. Union of India through Ministry of Railway have
filed the present writ application against the order dated 20th July,
2016 passed in O.A. No. 447 of 2015 by the Central Administrative
Tribunal, Patna Bench, Patna. Since the O.A. application has been



allowed, therefore, the Railways are now aggrieved party.

3. The following reliefs were prayed for before the Central Administrative Tribunal:

“8.1 That your Lordships may graciously be pleased to direct/command the respondents extend the same and similar benefits of the judgment/order dated 15.10.2014 [Anexure-A/6], 26.08.2008 [Annexure-A/2], 19.10.2010 [Anexure-A/3] and 04.01.2012 [Anexure-A/4] passed by Hon’ble Central Administrative Tribunal, Principal Bench, New Delhi, CAT Madras Bench, Hon’ble High Court Madras and Hon’ble Supreme Court of India respectively in favour of the applicant also and thereafter grant him the benefit of 2nd ACT in the pay scale of Rs.6500-10500 = Rs.9300-34800 GP 4800 w.e.f. 01.10.1999 and MACP in the pay scale of Rs.9300-34800 GP 5400 wef 01.09.2008 with arrears after fixing his pay and statutory interest thereon.

8.2 That your Lordships may further be pleased to direct/command the respondents to revise his entire pensionary benefits including Pension, DCRG, Commuted Value of Pension, Leave encashment etc. on the basis of his pay fixed



after grant of 2nd ACP and MACP as prayed in para 8.1 above along with compound interest at the rate of 18% from the due date.

8.3 That the respondents further be commanded to grant all consequential benefits for which the applicant is legally entitled to.

8.4 Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the applicant.”

4. Instead of reproducing the entire factual dispute, the core issue for consideration before this Writ Court is whether the Tribunal has committed any error of law by maintaining consistency in judicial decision making since identical matters were allowed in favour of the applicants before different Benches of the Central Administrative Tribunal, including Principal Bench and such line of decision has also been upheld by the Hon'ble Apex Court vide order dated 04.01.2012.

5. The Court is informed by the counsel for the private respondent that the reliefs granted by different Benches of the Central Administrative Tribunal after the order of the Hon'ble Apex Court, have been extended and benefit has been derived by the employees. This position is not contested by the counsel representing the Railways. The Tribunal while considering the dispute has this to



say:

“5. We have heard both the parties. It is noted that the applicant has contended that since up to the Apex Court, it has been decided that restructuring of posts cannot be treated as promotion and the applicant is exactly similarly situated to the applicants of the abovementioned judgments, hence they are entitled to get the benefits irrespective of any instructions by the Railway Board. It is further noted that the present applicant is similarly situated to the applicants of OA No.335 of 2007, in which case the order of CAT, Madras Bench was further affirmed by the Hon’ble High Court, wherein it has been held, inter-alia, as under:-

“8. We have once again gone through the entire materials placed on record. We are satisfied that the post of Sub-Heads with the scale of pay of Rs.1400-2600 was re-designated as Accounts Assistant and, therefore, it cannot be said that as per proceedings dated 03.07.1987, he was given promotion. In paragraph no.3 of the order dated 03.07.1987 pertaining to the restructuring of the Accounts staff of the Southern Railway, it is stated



thus:-

[i] Section Officers [A/c], Inspector of Stores Accounts [ISA], Inspector of Station Accounts [TIA]	Rs. 2000-60-2300- EB-75-3200	80%
[ii] Clerks Grade-1 (including existing Sub Heads)	Rs. 1640-60-2600- EB-75-2900	20%
	Rs. 1400-40-1600- 50-2300-EB-60- 2600	80%
	Rs. 1200-30-1560- EB-40-2040	20%

9. When the Clerk Grade 1, including the existing Sub-Heads were replaced with the scale of pay of Rs.1400-2600 of 80% by redesignation the above Sub Head as per proceedings dated 03.07.1987, it cannot be said that the second respondent was given promotion and hence, he is not entitled for the benefits under the ACP Scheme. During the course of arguments, when we asked the learned counsel appearing for the petitioners that during the period from 1983 till the completion of 24 years of service, any promotion was given to the second respondent other than restructuring the post; he was not in a position to indicate the promotion post. When no promotion is given to the second respondent till the completion of 24



years of service, it is not fair on the part of the petitioners to deny the benefit under the ACP Scheme.

10. In view of the above, we see no reason to interfere with the order passed by the Tribunal. The writ petition fails and the same is dismissed. Connected M.P. is closed. No costs.”

Aforesaid order was further considered by the Apex Court in Civil Appeal No. CC 9422 of 2011, wherein vide order dated 04.01.2012 it was held as under :-

“Delay condoned.

Having considered the pleadings in the case, the materials placed on record and the submissions of the learned counsel, we do not find any merit in the special leave petition and hence the special leave petition is dismissed.”

6. Further the CAT, Principal Bench in OA 3606 of 2012 again considered the same issue and vide order dated 15.10.2014, it held as under:-

“4. We have heard both sides and have perused the material on record. The basic contention of the applicants is that that they are squarely covered by the judgment of Chennai bench of this



Tribunal in OA 335 of 2007 dated 26.08.2008. This order has been upheld by Hon'ble High Court of Madras and SLP filed against the same has also been dismissed by Hon'ble Supreme Court. The applicants have, therefore, prayed that they be extended the same benefit as was given to the applicants of the aforesaid OA. The respondents on their part have not denied that the applicants are similarly placed as applicants of OA 335 of 2007. They have simply stated that the judgment in OA 335 of 2007 may not be treated as a precedent since it was an order per incuriam, in our opinion, this contention of the respondents cannot be accepted. The aforesaid order has not only been upheld by Hon'ble High Court of Chennai but even the SLP filed against the same had been dismissed. Hon'ble High Court of Mumbai has also passed a similar order in Writ Petition No.559 of 2008. If the respondents were aggrieved by this order they should have taken recourse to appropriate judicial proceedings rather than claiming that this order was per incuriam. On the contrary they have implemented the same vide their order



dated 13.08.2012.

5. In view of the above, we allow this OA and direct that the applicants herein shall be entitled to the same benefits as were allowed to the applicants of OA 335/2007 of Chennai Bench of this Tribunal. These benefits shall be extended to the applicants within a period of eight weeks from the date of receipt of a certified copy of this order. No costs.”

7. In the instant case, the respondents have taken the plea that since they did not get any instruction/circular for extending the benefits of these orders from the Railway Board, therefore, they cannot extend the same. However, after giving through the judgments specially the Apex Court judgments, it is noted that the Apex Court had gone through the entire pleadings of the respondents and having not found any merit on the same, had dismissed the SLP of the respondents and affirmed the order of the CAT Madras Bench as well order of Madras High Court. Therefore, in our opinion, since the issue on which the respondents had denied the benefit of ACP and MACP to the applicant treating the restructuring benefits as promotion with respect to all the employees



who got restructured benefit under 80% restructured posts has already been settled in favour of the applicants and no contrary fact or laws has been placed before us, therefore, the present applicant is entitled to same benefit and the respondents are duty bound to extend the benefit to all the similarly placed persons so that all the persons need not come before the Court of law to get the said benefit. Moreover, this is not the case of the respondents that they had preferred any appeal against the order of the Bombay High Court or even they have preferred any appeal against the order of the CAT, Principal Bench.”

6. It was for this reason that the Tribunal found it difficult to deviate from the findings and reasonings provided in the different orders and judgments, including the orders passed by coordinate Benches of Tribunal, which stood affirmed by the Hon’ble Apex Court.

7. The Court is informed that another round of litigation was initiated at the level of Central Administrative Tribunal, Madras Bench. The Madras Bench of the Central Administrative Tribunal taking into consideration the subsequent clarification and the circular issued by the Railways took a diverse view contrary to the



previous adjudication. However, the Madras Bench of the High Court in W.P. Nos. 23257 and 23258 of 2015 allowed the writ applications and quashed the order of the Madras Bench of the Central Administrative Tribunal dated 11th March, 2015 and 3rd June, 2015 passed in O.A. Nos. 383 and 384 of 2013 respectively. The Railway-authorities are still to decide whether to move the Hon'ble Apex Court or not.

8. Till the law is reinterpreted by the Hon'ble Apex Court, the previous view shall prevail and if the Central Administrative Tribunal, Patna Bench, Patna has maintained consistency in the adjudication, it has committed no error in fact or law.

9. The writ application, therefore, is required to be dismissed, which is dismissed.

(Ajay Kumar Tripathi, J.)

(Nilu Agrawal, J.)

Arjun/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19 .05.2017
Transmission Date	NA

