

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.27124 of 2021

Santosh Kumar Swain

.....

Petitioner

Mr.N.R.Routray, Advocate

Vs.

Union of India & Others

.....

Opposite Parties

*Mr.P.S. Nayak, Sr. Panel
Counsel, Union of India
(O.Ps 1-3)*

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE B.P. SATAPATHY

ORDER

01.12.2022

Order No.

04

This matter is taken up through hybrid mode.

2. Heard Mr. N.R.Routray, learned counsel appearing for the petitioner and Mr. P.S. Nayak, learned Sr. Panel Counsel, Union of India for 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.847 of 2019 (arising out of O.A. No.219 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., March, 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. P.S. Nayak, learned Sr. Panel Counsel, Union of India for 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 20190, 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.847 of 2019 (arising out of O.A. No.219 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.

(DR. B.R. SARANGI)
JUDGE

(B.P. SATAPATHY)
JUDGE

