
(2012) 05 OHC CK 0003

In the Orissa High Court

Case No : Writ Petition (C) No. 4425 of 2011

Union of India and Others

APPELLANT

Vs

Sudhansu Mohan Kanungo

RESPONDENT

Date of Decision : 15-05-2012

Acts Referred:

Citation : (2013) 115 CLT 605

Hon'ble Judges : L. Mohapatra, J;B.K. Misra, J

Bench : Division Bench

Advocate : Anindya Kumar Misra, Mr. H.M. Das and Mr. A.K. Sahoo, for the Appellant; N.B. Routray, S. Misra and Mr. T.K. Chaudhury, for the Respondent

Judgement

B.K. Misra, J.—The Union of India represented through the General Manager, East Coast Railway being aggrieved with the order of the Central Administrative Tribunal, Cuttack Bench, Cuttack dated 6.1.2011 passed in O.A. No. 597 of 2010 have filed this Writ Petition praying therein for quashing of the impugned order at Annexure 4. The case of the Petitioners is that the Opp. Party while working as Motor Mechanic Grade-III was granted the first financial up-gradation on 6.5.2004 under Assured Carrier Progression Scheme with effect from 3.9.2003 in the pay scale of Rs. 4000, Rs. 6000 with grade pay of Rs. 2400 which is applicable to Grade-II. Such financial up-gradation was extended to the Opp. Party as he had rendered service in a particular post for ten to twelve years without any promotion/Carrier Progression. After implementation of the 6th Pay Commission, the payment of incentive bonus was introduced according to Railway Board's letter dated 29.10.2009 which provided for applicability of designation & pay range for the purpose of calculation of incentive bonus. According to the Petitioners since the Opp. Party after grant of ACP was getting Rs. 2400 grade pay the same was taken into account as bonus factor though in fact the Opp. Party was working in a Grade-III post. Subsequently, the Railway Board issued clarification on 23.3.2010 to the effect that incentive bonus payment should be decided on the post/designation held by the employee & the

hourly rate/bonus - factor corresponding to that post/designation. In view of such clarification issued since the Opp. Party was holding the post & designation pertaining to Grade-III the grade pay of Rs. 1900 assigned to Grade-III post was taken into consideration for calculation of incentive bonus & the excess bonus already paid to the Opp. Party of grade pay of Rs. 2400 was ordered to be recovered. Challenging such decision of the present Petitioners the Opp. Party approached the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 597 of 2010 & the Tribunal after hearing the respective parties passed the impugned order holding that the decision of reduction of payment of incentive on the grade pay of Rs. 1900 is not sustainable being not in consonance with the instruction of the Railway Board dated 9.7.2004 (Annexure-A/11). It was further directed that the present Opp. Party is entitled to incentive on the grade pay of Rs. 2400 & also a direction was issued that if any deduction made on the strength of a decision to pay the incentive on the grade pay of Rs. 1900, the same shall be refunded forthwith but not later than 30 days from the date of receipt of the copy of the order. The said order of the Tribunal is under challenge in this Writ Petition.

2. We have heard Learned Counsel appearing for the Petitioners as well as Learned-Counsel appearing for the sole Opp. Party at length. Learned Counsel appearing for the Petitioners assailed the impugned order on the ground that the order of the Learned Tribunal cannot be sustained as it is against the policy decision of the Railway Board & that too after the clarification issued by the Board by its letter dated 23.3.2010 incentive payment IS to be made on the post/designation held by the employee & the factor corresponding to the post/designation.

3. Mr. Misra, Learned Counsel appearing for the Petitioners also contended that incentive bonus is granted to encourage production but since the Opp. Party belong to Technical Grade-III & assigned to do a particular job, he is not entitled to any-incentive bonus. Accordingly, grant of incentive has to be taken on the basis of grade pay assigned to Grade-III post but the Tribunal without considering such a vital aspect passed the impugned order which is vulnerable & accordingly to be quashed.

4. The Learned Counsel appearing for the Opp. Party contended that in view of the clear instruction of the Railway Board dated 9.7.2004 bonus factor of the incentive in respect of eligible staff is to be calculated on the basis of minimum basic pay in the present scale of pay to which the artisan belongs multiplied by an adhoc equalizing factor of 1.3. The bonus factor would remain constant for a scale irrespective of the basic salary of an artisan. It was also contended that since the Opp. Party was granted financial up-gradation vide Order Dated 6.5.2004 with effect from 3.9.2003 from the scale of Rs. 3050-4590 to Rs. 4000-6000 & revised scale of Rs. 5200-20,200 with grade pay of Rs. 2400 with effect from 1.1.2006 such reduction of grade pay from Rs. 2400 to Rs. 1900 from the month of February, 2010 by wrong interpretation of the Railway

Board's letter dated 23.2.2010 (Annexure-A/7) is erroneous & since the Opp. Party got the financial up-gradation under the ACP Scheme but not under the MACP Scheme, the order of reduction of incentive cannot be sustained in the eye of law which the Tribunal has correctly held & accordingly, when the impugned order is a well reasoned one the same should not be interfered with.

5. It is an admitted fact that the Opp. Party initially joined as a Motor Mechanic under the category of Skilled Artisan in the scale of pay of Rs. 950-1500 with effect from 5.4.1988. Such services were regularized on successful completion of the training vide Order Dated 3.9.1991 & the Opp. Party joined as a Skilled Artisan Grade-III in the scale of pay of Rs. 950-1500 vide Annexure A/1. When the 5th Central Pay Commission introduced the Assured Career Progression Scheme, the present Opp. Party was found suitable by the Screening Committee for grant of 1st financial up-gradation under the ACP Scheme with effect from 3.9.2003. Thereafter on the recommendation of the 6th Pay Commission the pay of the present Opp. Party was revised from Rs. 4000-6000 to Rs. 5200-20,200 with effect from 1.1.2006 & he was also granted grade pay of Rs. 2400 which the present Opp. Party continued to draw till January, 2010. When such grade pay was reduced from Rs. 2400 to Rs. 1900 the present Opp. Party along with others who faced such financial hardship represented to Petitioner No. 3. The same was when turned down the present Opp. Party approached the Central Administrative Tribunal, Cuttack Bench by filing O.A. No. 199 of 2010 which was disposed of on 3.5.2010 with a direction to consider the representation & after such direction was issued the Chief Workshop Manager, Carriage Repair Workshop, East Coast Railway, Mancheswar namely, the present Petitioner No. 2 rejected the representation for which the Opp. Party had to approach again the Tribunal by filing O.A. No. 597 of 2010.

6. On going through the materials available on record & the pleadings of the Petitioners in the Writ Petition it is found that the Opp. Party while working as Motor Mechanic Grade-III was granted the first financial up-gradation on 6.5.2004 under Assured Career Progression Scheme (ACPS) with effect from 3.9.2003. The Opp. Party was granted financial up-gradation in the pay scale of Rs. 4000-6000 along with grade pay of Rs. 2400 which was applicable to Grade-II employees even though Opp. Party was a Motor Mechanic Grade-III. Such ACP was allowed by the Petitioners as the Opp. Party was continuing in the post for 10 to 12 years without any promotion & Career Progression. But subsequently with the implementation of 6th Pay Committee Recommendation & as per the clarification issued by the Railway Board by its letter dated 29.10.2009 the grade pay of the Opp. Party was fixed at Rs. 1900 & it was decided that the excess bonus paid on the grade pay of Rs. 2400 to the Opp. Party was to be recovered. Challenging that the Opp. Party had approached the Central Administrative Tribunal in Cuttack Bench, Cuttack by filing O.A. No. 199 of 2010 & that was disposed of with a direction to the present Petitioners to consider the representation filed by the present Opp. Party & others whereafter the Petitioner No. 2 disposed of the representation of the Opp. Party & others vide orders at

Annexure-A/6.

7. Being aggrieved with the order of the Petitioner No. 2 as at Annexure-A/10, O.A. No. 597 of 2010 was filed & the Tribunal while disposing of the said O.A. observed that the Opp. Party is entitled to the incentive on the grade pay of Rs. 2400 & the same should be disbursed in view of Annexure-A/11 & further directed that any deduction already made on the strength of the decision to pay the incentive on the grade pay of Rs. 1900 be refunded to the applicant. About refund of the excess bonus paid to the Opp. Party with effect from 3.9.2003 till January, 2010, the order of the Petitioner No. 2 cannot be sustained in the eye of law for a moment as the Opp. Party received grade pay of Rs. 2400 with, effect from 3.9.2003 in the pay scale of Rs. 4000-6000 which was fixed by the Petitioners under the Assured Career Progression Scheme (ACPS) & that was not due to the fault of the Opp. Party. Thus, taking the worst view of the case if the grade pay so granted to the Opp. Party has been reduced from Rs. 2400 to Rs. 1900 as per the Railways Board instruction & such incentive was paid on the grade pay of Rs. 2400 to the Opp. Party till January, 2010, it would be just & proper not to recover any excess amount which has already been paid to the opposite party by the Petitioners & that too for no fault of the Opp. Party. We have no hesitation to direct the Petitioners that no step should be taken to recover or to adjust any excess amount paid to the Opp. Party due to the fault of the Petitioner No. 2 as the Opp. Party is in no way responsible for the same. In that connection we place reliance on a decision of the Apex Court as reported in Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, Thus, from the aforesaid discussion, we are of the considered view that the direction of the Tribunal with regard to refund of the incentive to the Opp. Party needs no interference.

8. Now comes to the most important point for consideration as to whether the Opp. Party is entitled to incentive bonus with the grade pay of Rs. 2400 in the pay scale of Rs. 4000-6000 which was granted to the Opp. Party as financial up-gradation can be reduced to Rs. 1900. The Petitioners assert that after implementation of the 6th Central Pay Commission Recommendation the Opp. Party who was holding the post of Motor Mechanic Grade-III is entitled to draw salary in the scale of pay of Rs. 3050-4590 with grade pay of Rs. 1900 i.e. as per Government of India, Ministry of Railways, Railway Board letter dated 29.10.2009. This letter of the Railway Board bearing RBE No. 194/2009 dated 29.10.2009 issued by the Joint Director Mechanical Engineering (P) I, Railway Board addressed to the General Manager, East Coast Railways, Bhubaneswar is used as a trump card by the Petitioners who claim that since the Opp. Party admittedly a Motor Mechanic, Technical Grade-III with the implementation of 6th Central Pay Commission pay structure is to be fit in the pay range of Rs. 5200-20200 with grade pay of Rs. 1900 with effect from 1.6.2009 (Annexure - R/1). As against this, it is the case of the Opp. Party that being conscious of the different guidelines issued by the Railways Board while extending benefits of up-gradation under the Assured Career Progression Scheme (ACPS) the Petitioners

fixed the pay of the Opp. Party in the pay range of Rs. 4000-6000 with grade pay of Rs. 2400 with effect from 3.9.2003 as the Opp. Party was found working in that particular post without any promotion or career progression for 10 to 12 years & in view of that conscious decision of the Petitioners they are estopped from taking a different stand in saying that since the Opp. Party is a Grade-III employee he is entitled to grade pay of Rs. 1900 but not Rs. 2400. Much reliance has been placed by the Opp. Party on Annexure-A/2 so also the Tribunal has also laid much emphasis on the instructions issued by the Railway Board under Annexure-A/11 which is dated 9.7.2004.

9. Admittedly, there are two pattern of incentive scheme prevailing in the Indian Railways i.e. one is Chittaranjan pattern & other one is Group Incentive Scheme (GIS). The Group Incentive Scheme has been implemented at Mancheswar Workshop under the East Coast Railways. Such GIS Bonus factor is applicable whereas hourly rates are applicable to the Chittaranjan pattern. After implementation of the 6th Central Pay Commission Recommendation incentive bonus was made applicable according to the Railway Board on the basis of grade pay vide Annexure-A/1. Subsequently, a clarification was issued by the Railway Board under Annexure-A/7 which provided that incentive payment should be decided on the basis of the post/designation held by the employee & the hourly rate/bonus factor corresponding to that post/designation.

10. The Railway Board instruction under Annexure-A/11 dated 9.7.2004 speaks as follows:-

1. Para 11 of Railway Board's letter of even No. dated 29.6.2003 reads as follows:-

The bonus factor of the incentive eligible staff shall be calculated on the basis of minimum of salary in a grade to which an artisan belongs multiplied by an adhoc equalizing factor of.

1.3. The bonus factor would remain constant for a grade irrespective of the basis salary of an artisan.

2. Now the above said Para is amended as follows:-

The bonus factor of the incentive eligible staff shall be calculated on the basis of minimum basic pay in the present scale of pay to which an artisan belongs multiplied by an adhoc equalizing factor of 1.3. The bonus factor would remain constant for a scale irrespective of the basic salary of an artisan.

3. This issues with the concurrence of Finance Directorate of Ministry of Railways.

11. Admittedly, the Opp. Party who is a Motor Mechanic Grade-III holds the post of Technical Grade-III & as per the recommendation of the 6th Central Pay Commission & restructuring the pay of the employees the Opp. Party is in the range of Rs. 5200-20200 with grade pay of Rs. 1900. The Tribunal in the impugned Judgment has held that when the applicant namely the present Opp.

Party is placed in higher scale of pay with grade pay he is entitled to the incentive on the basis of grade pay attached to that pay scale & is not to get the grade pay of Rs. 1900 & that too in view of the instructions contained under Annexure-A/11 which has not been withdrawn. After considering the materials placed before us & having applied our judicial conscience, we are of the considered view that if the Opp. Party while continuing in Grade-III was getting scale of pay attached to Grade-II, he is entitled to the grade pay attached to that scale unless his pay scale is reduced to the scale attached to Grade-III such grade pay cannot be reduced. Accordingly, the Opp. Party is entitled to the benefits flowing from 6th Pay Commission recommendation in the scale & grade pay for Grade-II officials.

The Writ Petition accordingly stands disposed of.

No costs.

L. Mohapatra, J.

I agree.