

**HIGH COURT OF ORISSA: CUTTACK**

**W.P.(C) No.4425 of 2011**

In the matter of application under Articles 226 & 227 of the  
Constitution of India.

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Union of India represented ..... Petitioners  
through the General Manager,  
East Coast Railway,  
Bhubaneswar and others.

-Versus-

Sudhansu Mohan Kanungo ..... Opp. Party

For Petitioners : M/s.Anindya Kumar Misra,  
Mr.H.M.Das & Mr.A.K.Sahoo  
Advocates.

For Opp. party : M/s. N.B.Routray, Mr.S.Misra  
& Mr.T.K.Chaudhury  
(Advocates).

**P R E S E N T:**

**THE HON'BLE MR. JUSTICE L.MOHAPATRA  
AND  
THE HON'BLE MR. JUSTICE B.K.MISRA**

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**Date of Judgment: 15.05.2012**  
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**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.

2. The case of the petitioners is that the opposite 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 opposite party as he had rendered service in a particular post for ten to twelve years without any promotion/Carrier Progression. After implementation of the 6<sup>th</sup> 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 and pay range for the purpose of calculation of incentive bonus. According to the petitioners since the opposite party after grant of ACP was getting Rs.2400/- grade pay the same was taken into account as bonus factor though in fact the opposite 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 and the hourly rate/bonus factor corresponding to that post/designation. In view of such

clarification issued since the opposite party was holding the post and 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 and the excess bonus already paid to the opposite party of grade pay of Rs.2400/- was ordered to be recovered. Challenging such decision of the present petitioners the opposite party approached the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 597 of 2010 and 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 opposite party is entitled to incentive on the grade pay of Rs.2400/- and 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.

3. We have heard learned counsel appearing for the petitioners as well as learned counsel appearing for the sole

opposite 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 and 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 and the factor corresponding to the post/designation.

4. Mr.Misra, learned counsel appearing for the petitioners also contended that incentive bonus is granted to encourage production but since the opposite party belong to Technical Grade-III and 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 and accordingly to be quashed.

5. The learned counsel appearing for the opposite 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 opposite 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/- and 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 and since the opposite 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 and accordingly, when the impugned order is a well reasoned one the same should not be interfered with.

6. It is an admitted fact that the opposite 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 and the opposite party joined as a Skilled Artisan Grade-III in the scale of pay of Rs.950-1500/- vide Annexure-A/1. When the 5<sup>th</sup>

Central Pay Commission introduced the Assured Career Progression Scheme, the present opposite party was found suitable by the Screening Committee for grant of 1<sup>st</sup> financial up-gradation under the ACP Scheme with effect from 3.9.2003. Thereafter on the recommendation of the 6<sup>th</sup> Pay Commission the pay of the present opposite party was revised from Rs.4000-6000/- to Rs.5200-20,200/- with effect from 1.1.2006 and he was also granted grade pay of Rs.2400/- which the present opposite party continued to draw till January, 2010. When such grade pay was reduced from Rs.2400/- to Rs.1900/- the present opposite party along with others who faced such financial hardship represented to petitioner No.3. The same was when turned down the present opposite 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 and 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 opposite party had to approach again the Tribunal by filing O.A. No. 597 of 2010.

7. On going through the materials available on record and the pleadings of the petitioners in the writ petition it is

found that the opposite 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 opposite 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 opposite party was a Motor Mechanic Grade-III. Such ACP was allowed by the petitioners as the opposite party was continuing in the post for 10 to 12 years without any promotion and Career Progression. But subsequently with the implementation of 6<sup>th</sup> Pay Committee Recommendation and as per the clarification issued by the Railway Board by its letter dated 29.10.2009 the grade pay of the opposite party was fixed at Rs.1900/- and it was decided that the excess bonus paid on the grade pay of Rs.2400/- to the opposite party was to be recovered. Challenging that the opposite party had approached the Central Administrative Tribunal in Cuttack Bench, Cuttack by filing O.A. No. 199 of 2010 and that was disposed of with a direction to the present petitioners to consider the representation filed by the present opposite party and others whereafter the petitioner No.2 disposed of the representation of the opposite party and others vide orders at Annexure-A/6.

8. Being aggrieved with the order of the petitioner No.2 as at Annexure-A/10, O.A. No. 597 of 2010 was filed and the Tribunal while disposing of the said O.A. observed that the opposite party is entitled to the incentive on the grade pay of Rs.2400/- and the same should be disbursed in view of Annexure-A/11 and 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 opposite 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 opposite 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) and that was not due to the fault of the opposite party. Thus, taking the worst view of the case if the grade pay so granted to the opposite party has been reduced from Rs.2400/- to Rs.1900/- as per the Railways Board instruction and such incentive was paid on the grade pay of Rs.2400/- to the opposite party till January, 2010, it would be just and proper not to recover any excess amount which has already been paid to the opposite party by the petitioners and that too for no fault of the



opposite 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 opposite party due to the fault of the petitioner No.2 as the opposite 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 **(1994) 2 Supreme Court Cases 521, Shyam Babu Verma and others V. Union of India 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 opposite party needs no interference.

9. Now comes to the most important point for consideration as to whether the opposite 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 opposite party as financial up-gradation can be reduced to Rs.1900/-. The petitioners assert that after implementation of the 6<sup>th</sup> Central Pay Commission Recommendation the opposite 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 opposite party admittedly a Motor Mechanic, Technical Grade-III with the implementation of 6<sup>th</sup> 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 opposite 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 opposite party in the pay range of Rs.4000-6000/- with grade pay of Rs.2400/- with effect from 3.9.2003 as the opposite party was found working in that particular post without any promotion or career progression for 10 to 12 years and in view of that conscious decision of the petitioners they are estopped from taking a different stand in saying that since the opposite 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 opposite party on Annexure-A/2 so also the Tribunal has also laid much emphasis on the instructions issued by the Railway Board under Anneuxre-A/

11 which is dated 9.7.2004.

10. Admittedly, there are two pattern of incentive scheme prevailing in the Indian Railways i.e. one is Chittaranjan pattern and 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 6<sup>th</sup> 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 and the hourly rate/bonus factor corresponding to that post/designation.

11. 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.”

12. Admittedly, the opposite party who is a Motor Mechanic Grade-III holds the post of Technical Grade-III and as per the recommendation of the 6<sup>th</sup> Central Pay Commission and restructuring the pay of the employees the opposite 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 opposite 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 and is not to get the grade pay of Rs.1900/- and that too in view of the instructions contained under Annexure-A/11 which has not been withdrawn.

13. After considering the materials placed before us and having applied our judicial conscience, we are of the considered view that if the Opposite 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 Opposite Party is entitled to the benefits flowing from 6<sup>th</sup> Pay Commission recommendation in the scale and grade pay for Grade-II officials.

The writ petition accordingly stands disposed of.

No costs.

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***B.K.Misra, J.***

***L.Mohapatra, J.***                      I agree.

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***L.Mohapatra, J.***

**Orissa High Court, Cuttack**  
**The 15<sup>th</sup> May, 2012/KS**