

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 200/01060/2016

Jabalpur, this Monday, the 5th day of November, 2018

HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

1. C.B.W.E. Pensionary Officers Association
(All India Association of Retired Employees of CBWE),
Registration No.-Soc.GUJ/18542/ Ahmedabad, Trust :
F/18056/Ahmedabad, Through its Organizing Secretary
Shri Ashok Kumar Tiwari, Retd. Regional Director,
S/o Shri B.P.Tiwari, Date of birth 15.3.1954,
R/o 744, M.P.Housing Board Colony, Shiv Nagar,
Post Office, Baldeobagh, Jabalpur-482002,M.P.

2. Shri R.S.Mathur, S/o Shri Sardarmal, D.O.B-01.08.1952,
Retd. Regional Director, CBWE Centre- Nagpur, C/o Chandra Shekhar,
43 Basant Kunj, Bhopal (M.P.)-462001

- Applicants

(By Advocate – Shri S.K.Nandy)

V e r s u s

1. Union of India, Through its Secretary,
Ministry of Labour & Employment, Shram Shakti Bhawan,
Rafi Marg, New Delhi-110001

2. The Chairman, Central Board of Workers Education,
7/10, Room No.21/22, Jamnagar House, Mansingh Road,
New Delhi-110001

3. The Director, Central Board of Workers Education,
Ministry of Labour and Employment, Govt.of India, North Ambhajhari
Road, Near VNIT Gate Nagpur-440033 (M.S.)

-Respondents

(By Advocate – Shri S.P.Singh)

(Date of reserving the order: 31.10.2018)

ORDER

By Ramesh Singh Thakur, JM-

The applicants are aggrieved with the inaction on the part of the respondents in not granting the members of the Association, who are retired officers in the cadre of Education Officer, the upgraded pay scale granted to similarly placed persons, in term of the order passed by the Calcutta Bench of this Tribunal in Original Application No.566 of 2077 dated 27.09.2007 whereby the Tribunal has extended the benefit of the upgraded pay scale as per the recommendations of the Dasgupta Pay Sub Committee with effect from 01.01.1996.

2. The applicants have stated that in compliance with aforesaid direction of Calcutta Bench of the Tribunal, the respondents have issued an Office Memorandum dated 28.05.2008 and the entire cadre of Education Officers have been granted the upgraded pay scale with effect from 01.01.1996 and actual benefits have been made with effect from 09.07.2007.

3. During the course of hearing learned counsel for the applicants has produced copy of the order passed by this Tribunal in the matters of **Mohd.Saeed Khan Vs. Union of India and others** decided on 15.09.2014 contending that the lis involved in the present OA is no more res integra.

4. On the other hand the learned counsel for the respondents has submitted that aforesaid decision of Calcutta Bench of this Tribunal has been challenged in W.P.C.T. No.85 of 2010 before Hon'ble High Court of Calcutta and said matter has not yet reached its finality and is sub-judice before the Hon'ble High Court.

5. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed therewith.

6. The issue involved in the present Original Application is no more *res integra* as several orders have been passed by various Benches of this Tribunal in respect of similarly placed persons. It would be relevant to reproduce complete contents of the order passed by this Tribunal in Original Application No.200/00806/2014 (**Ashok Kumar Tiwari Vs. Union of India and others**) on 03.11.2015:

“By way of filing this Original Application, the applicant has sought for direction to the respondents to revise Pension Payment Order by calculating the applicant's basic pay in the revised pay scale (upgraded pay scale) and revise Pension Payment Order by calculating the applicant's basic pay in the revised pay scale (upgraded pay scale) and revise the authorization letter dated 19.6.2014 (Annexure A-1) and thereafter calculate and disburse the pensionary benefits like Gratuity DCRG etc. and other attendant benefits in favour of the applicant in revised pay scale as per the recommendations of Dasgupta Committee and judgment passed by the Hon'ble Calcutta High Court with all consequential benefits.

2. *The brief facts of the case are that the applicant, who is a retired Regional Director, Central Board for Workers Education (for brevity 'CBWE'), Jabalpur, was initially appointed with the respondent-department as Education Officer in the year 1984 and*

in due course of time was promoted as Regional Director. He retired on superannuation on 31.3.2014 and his pension was fixed at Rs.14305/- and reduced pension as Rs.8583/- vide Annexure A-1 dated 19.6.2014. The grievance of the applicant is that he is denied the benefit of revised pension as well as other retiral benefits as per the last pay drawn. The applicant has impugned the letter dated 19.6.2014 addressed to the Chief Manager, State Bank of India, Dharampeth Branch, Nagpur issued by the Accounts Officer, Central Board for Workers Education, North Ambazari Road, Nagpur, wherefrom it will be evident that the pension was not fixed as per his last pay drawn. From the perusal of the said letter, it appears that the contention of the CBWE was that the Ministry of Finance, Department of Expenditure, Govt. of India, has not agreed on implementation of upgradation of pay scale to the Education Officer cadre in the CBWE as per judgment of this Tribunal and hence the pension to the Education Officer cadre should be granted based on the lower pay scale only. Accordingly, the Competent Authority, decided to release the monthly pension to the applicant treating him an employee of Education Cadre on the basis of pre revised pay scale of the post (i.e. Rs.8000-275-13500/-) held immediately before his retirement, provisionally till the final decision is received from the Hon'ble High Court, Kolkata in WPTC No.85/2010.

3. *The issue involved in the present Original Application is no more res integra as several orders have been passed by several Benches of this Tribunal in respect of similarly placed persons. It would be relevant to reproduce complete contents of the order passed by Mumbai Bench of this Tribunal in the matters of **S.S.Dangi Vs. Union of India and others**, Original Application No.162/2013, passed on 28.08.2013 as under:*

“The grievance of the applicant who is a retired Dy. Director, Central Board for Workers Education, Nagpur is that he is denied of the benefit of revised pension as well as other retiral benefits as per the last pay drawn. The applicant has impugned the letter dated 12.01.2012 addressed to the Chief Manager, State Bank of India, Dharampeth Branch, Nagpur issued by the Director, Central Board for Workers Education, North Ambazari Road, Nagpur being the Respondent No.3, where from it will be evident that the pension was not fixed as per his last pay drawn. Reduced pension of Rs.8799 at pre-revised scale was allowed.

(2) From the perusal of the said letter, it appears that the contention of the said Respondent no.3 was that pay scale was implemented without concurrence from the Finance Ministry, Govt. of India, New Delhi and DOPT. An objection has been raised by the AG Audit and the Internal Audit Wing of the Ministry of Labour and Employment, Govt. of India about the irregular implementation of the up-gradation of the pay scale without concurrence of the Competent Authority and without amendment in the Recruitments Rules of the post. The Ministry as such has not approved any budget provision for the same to the CBWE. The Competent Authority, therefore, decided to release the monthly pension to the Education Officer Cadre being the applicant Shri S.S. Dangi on the basis of pre revised pay scale of the post (i.e. Rs.8000-275-13500/-) holding immediately before their retirement corresponding to 6th CPC Scale provisionally till the final decision is received from the Hon'ble High Court, Kolkata.

(3) The Respondents in their reply contended inter alia that the applicant retired on attaining the age of superannuation on 31.08.2011 from the Board's services from the post of Dy. Director. That, due to disputed pay scale of the applicant and as the matter is subjudice before the Hon'ble High Court, Calcutta that Shri S.S. Dangi, Ex-Dy. Director was granted monthly Basic Pension of Rs.14,665/-, Reduced Pension of Rs.8,799/-with effect from 01.09.2011 on his retirement from Board's services. The pay scales of Education Officers cadre was implemented by the Respondent Board without sanction and approval from the Ministry of Finance, Govt. of India, New Delhi. Hence, it has been decided by Department of Expenditure that the pension should be granted based on the lower pay scales only as the upgraded pay scale was not agreed as well as not approved by the Ministry of Finance stated supra. However, the Hon'ble CAT, Kolkata order dated 27.09.2007 marked as Annexure R-1 has been challenged by the respondents in the Hon'ble High Court, Kolkata bearing WPTC No.85 of 2010 against the CAT Order/Judgment, Kolkata Bench, Kolkata which is matter of record. The competent authority in CBWE reviewed the entire case and decided to pay the Revised Rate of Monthly Pension provisionally on the basis of pre- revised

pay scale of the post of the Officer holding immediately before his retirement, corresponding to the 6th CPC scale.

(4) The Respondents have also enclosed order passed in OA No.566/2007 by the CAT Calcutta Bench. The Hon'ble Calcutta Bench after a detailed discussion directed the respondents to consider the implementation of Dasgupta Commission Report in implementing the pay scales keeping in view observations mentioned in the said order. Paragraph 15 of the said order of Calcutta Bench is reproduced herein below:

15. In view of the observation made above and submission of the Ld. Counsel for the respondents, we find sufficient merit in this O.A. The respondents are directed to consider the implementation of Dasgupta Commission Report in implementing the pay scales keeping in view our observations mentioned in this order. While considering so, they are also to consider implementation of the direction of Mumbai Bench, restoration of status of Education Officers equivalent to Group 'A' (Class-I) Officers notionally from 1.1.1996 and also to consider the appropriate fitment of Education Officer (Selection Grade), Regional Director, Training Officer, Research Officer & Dy. Directors/Zonal Directors and Additional Director as per recommendation of the aforesaid committee. The entire exercise of consideration and passing of necessary orders be completed within 3 months from the date of communication of this order. The O.A. is thus allowed with the aforesaid direction. No order as to costs.

(5) The Department carried the matter to the Hon'ble High Court at Calcutta by way of Writ Petition bearing W.P.C.T. No.85/2010 but before the said W.P.C.T. 85/2010 was moved the Department already implemented the order passed by the Calcutta Bench vide order dated 28.05.2008. The said order dated 28.05.2008 has been annexed by the applicant as Annexure A-2 to this Original Application. Relevant parts of the said order dated 28.05.2008 are reproduced herein below:

In compliance of the order dated 27.09.2007 passed by the Division Bench of the Hon'ble Central Administrative Tribunal, Calcutta Bench, Calcutta in OA No.566 of 2007 in the matter of CBWE Officers' Association & Another Vs. Union of India & Other and as per approval of Government of India, Ministry of Labour and Employment, New Delhi contained in their letter No.C-18011/7/2007-ESA(WE) dated 28.05.2008 the Cadre of Education Officers (from Education Officer to Additional Director) has been given the following pay scales with effect from 01.01.1996 on the notional basis with actual payments being made from 09.07.2007.....

(3)The over payment, if any detected later, will be adjusted from any amount due. An undertaking may be obtained from the Officers in writing, while making the payment of arrears of salary to the effect that any excess payment that may be found to have been made as a result of fixation of pay will be refunded by them to the CBWE either by adjustment against future payment or otherwise.

*(6) OA No.566/2007 was filed before the CAT, Calcutta Bench by the Officers' Association namely Central Board for Workers Education Officers' Association. When the W.P.C.T. No.85/2010 was pending before the Calcutta Bench, miscellaneous application being CAN No.5418/2012 was filed by the added parties who were retired employees of the said Central Board for Workers Education. The Hon'ble High Court at Calcutta held that while the OA 566/2007 was pending some of the applicants retired from service while others have retired from various dates on or after 01.01.1996. It has further been held that an administrative order has been issued on 28th May, 2008 by the Central Board for Workers Education regarding the removal of pay anomaly for the cadre of Education Officer in order to implement the order of the Tribunal of Calcutta Bench. The prayer in the said CAN No.5418/2012 before the High Court was that the said administrative order dated 28.05.2008 should be applicable to the retired employees as well. **Accordingly the Hon'ble High Court at Calcutta directed***

that the administrative order dated 28.05.2008 be made applicable to the retired employees as well.

(7) Learned counsel for the applicant has also annexed an order passed by CAT Guwahati Bench in OA No.269/2011, filed by a retired employee who is similarly situated as the applicant of the present OA. The Hon'ble CAT Guwahati Bench held that it was not disputed by the respondents that in view of the administrative order dated 28.05.2008 as well as order passed by the Hon'ble High Court revised pay scale had been granted to the officers. Therefore, the CAT Guwahati Bench directed to implement the administrative order dated 28.05.2008 in respect of the applicant of OA 269/2011 being a retired officer keeping in view of the order of the Hon'ble High Court at Calcutta by giving benefit of revised pension within three months from the date of receipt of the order. The learned counsel submits that the applicant in the present OA is similarly situated like the applicant in OA 269/2011.

(8) At the time of argument Mrs. Shah, learned counsel for the respondents was asked to take instruction whether the retired employees of CBWE are getting the benefit of revised pension in compliance of the order of the Hon'ble High Court of Calcutta in CAN No.5418/2012 in W.P.C.T. No.85/2010. Mrs. Shah today at the time of final hearing handed over instruction dated 20.08.2013 issued to the Regional Director, Central Board of Workers Education, Thane. It appears from the said order that the order of Hon'ble High Court has been complied with however subject to the outcome of the W.P.C.T. No.85/2010 pending before the Hon'ble High Court at Calcutta. Learned counsel for the applicant has also handed over an order dated 01.02.2013 issued by the Under Secretary to the Govt. of India, Ministry of Labour and addressed to the Director, Central Board for Workers Education, Nagpur. Paragraph 2 of the said letter is set out herein below:

2.In this matter, and it has been decided to implement the Hon'ble High Court, Calcutta interim order dated 07.09.2013 in CAN No.5418/2012 to applicants only i.e. 18 added respondents, subject to final outcome of the Writ Petition CT No.85(W) of 2010.

(9) Learned counsel for the respondents submits that the benefit of revised pension has been extended only to the added parties in WPCT 85/2010 pending before the Hon'ble High Court at Calcutta.

(10) It is well settled that similar benefits should be extended to the similarly situated employees without bothering them to come before the Court of law. The Hon'ble Apex Court as early as in 1975 in the case of Amrit Lal Berry Vs. CCE, AIR 1975 SC 538 held as under:

We may however, observe that when a citizen aggrieved by the action of a Government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court.

In a later case of Uttaranchal Forest Rangers' Assn. (Direct Recruit) Vs. State of U.P. reported in 2007 (1) SCC (L&S) 116 the Apex Court has referred to the decision in the case of State of Karnataka Vs. C. Lalitha (2006) 2 SCC 747 as under:

29. Service jurisprudence by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the Court that would not mean that persons similarly situated should be treated differently.

(11) In view of the facts and law discussed above, I am of the view that same benefit should be extended to the applicant as has been extended to the retired employees being the added parties in CAN No.5418/2012 in W.P.C.T. No.85/2010 pending before the Hon'ble High Court at Calcutta. Accordingly, Respondent no.3 is directed to pass an order for extending the benefit of revised pension to the applicant in consonance with the order of the Hon'ble High Court at Calcutta as mentioned above.

(12) Original Application is accordingly disposed of. No order as to costs”.

4. Since the applicant in the instant Original Application is similarly placed as that of the applicant before Bombay Bench of the Tribunal in the aforementioned Original Application, I dispose of this Original Application in the same terms as directed by the Bombay Bench of the Tribunal in the aforementioned case.

5. Accordingly, the Original Application is allowed. Respondent No.3 is directed to pass an order for extending the benefit of revised pension and other retiral benefits calculated on the basis of it to the applicant in consonance with the order of the Hon'ble High Court at Calcutta as mentioned above. However, this would be subject to the final outcome of the decision of the Hon'ble High Court of Calcutta in the aforementioned case. No costs”.

7. On perusal of orders of various Benches of this Tribunal as mentioned in the above extract, I find that the respondents have implemented various orders and granted retiral benefits to other similarly placed persons in consonance with the order of the Hon'ble High Court at Calcutta as mentioned above, however, these orders were made subject to the final outcome of the decision of the Hon'ble High Court of Calcutta in the aforementioned case. Therefore, I am of the considered view that same benefits should also be extended to the members of the applicant-Association as has been extended to the retired employees being the added parties in CAN No.5418/2012 in W.P.C.T. No.85/2010 pending before the Hon'ble High Court at Calcutta.

8. Accordingly, the Original Application is allowed. The respondent No.3 is directed to pass an order for extending the benefit of revised

pension and other retiral benefits, to the members of the applicant No.1 Association, in consonance with the orders of the Hon'ble High Court at Calcutta as mentioned above. However, this would be subject to the final outcome of the decision of the Hon'ble High Court of Calcutta in the aforementioned case. No costs.

(Ramesh Singh Thakur)
Judicial Member

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