

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH.

M.A. No. 350/ 00082 of 2017

O.A. No. 350/ 00138 of 2017.

1. Radha Raman Sardar, son of late  
Brindaban Ch. Sardar, aged about  
69 years, retired Upper Division  
Clerk, office of the Vehicle Depot,  
Panagarh, P.O. Panagarh, Dist.  
Burdwan, Pin: 713 420, West  
Bengal, residing at Vill. Sukdal,  
P.O. & P.S. Bud Bud, Dist.  
Burdwan, Pin : 713 403, West  
Bengal.
2. Subhas Chandra Bhattacharjee,  
son of late J. C. Bhattacharjee,  
aged about 64 years, retired  
Upper Division Clerk, office of the  
Vehicle Depot, Panagarh, P.O.  
Panagarh, Dist. Burdwan, Pin: 713  
420, West Bengal, residing at Vill.  
Bud Bud Natun Pally, P.O. & P.S.

Wile

Bud Bud, Dist. Burdwan, Pin : 713

403, West Bengal.

3. Dinesh Chandra Sarkar, son of late

Indubhusan Sarkar, aged about 69

years, retired Upper Division Clerk,

office of the Vehicle Depot,

Panagarh, P.O. Panagarh, Dist.

Burdwan, Pin: 713 420, West

Bengal, residing at Vill. Nityananda

Pur, P.O. Radha Mohan Pur, P.S.

Sonamukhi, Dist. Bankura, Pin :

722 207, West Bengal.

4. Smt. Usha Rani Ghosh, wife of

Sankar Ghosh, aged about 62

years, retired Upper Division Clerk,

office of the 31 FAD C/o. 99 APO,

Pin : 901 320, West Bengal,

residing at Vill. Bud Bud Natun

Pally, P.O. & P.S. Bud Bud, Dist.

Burdwan, Pin : 713 403, West

Bengal.

W.L.

5. Asoke Chakraborty, son of late Bholanath Chakraborty, aged about 61 years, retired Senior Store Superintendent, office of the Vehicle Depot, Panagarh, P.O. Panagarh, Dist. Burdwan, Pin: 713 420, West Bengal, residing at Vill. Natun Pally, P.O. & P.S. Bud Bud, Dist. Burdwan, Pin : 713 403.

...Applicants.

-Vs-

1. Union of India through the Secretary to the Govt. of India, Ministry of Defence, South Block, New Delhi- 110 011.
2. The Director General of Ordnance Services, Master General of Ordnance Branch, Integrated Headquarters of Ministry of Defence (Army), DHQ, PO: DHQ, New Delhi- 110 011.

Wife

3. Army Ordnance Corps, Record

Officer, PB-3, Trinulgherry, PO:

Secunderabad- 500 015 (AP).

4. Major General, Army Ordnance

Corps, Headquarters, Eastern

Command, Fort William, Kolkata-

700 021.

5. Commandant, Ammunition Depot,

Panagarh, PO: Muraripur (W/B),

Pin : 713 419.

6. Commandant, Vehicle Depot,

Panagarh, P.O. Muraripur, West

Bengal, Pin : 713 419.

...Respondents.

Val

No. M.A. 350/00082/2017  
O.A. 350/00138/2017

Date of order: 7.8.2017

Present: Hon'ble Mr. A.K. Patnaik, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

For the Applicant : Mr. S.K. Dutta, Counsel

For the Respondents : Mr. P. Mukherjee, Counsel

O R D E R (Oral)

A.K. Patnaik, Judicial Member:

Heard Mr. S.K. Dutta, Ld. Counsel for the applicant and Mr. P. Mukherjee, Ld. Counsel for the respondents.

2. On being questioned regarding the maintainability of the O.A., Mr. Dutta fairly submitted that it is not a case where each and every applicant is claiming some financial upgradation from a same date, rather it is a case where the applicants have joined together to challenge an order in which the respondents are treating their appointment as promotion as although the same was a fresh recruitment. Mr. Dutta further submitted that, as per the order dated 30.11.2016, the respondents have already rejected the claim of the applicants stating that they were not parties in the earlier O.A. No. 686 of 2009 which was filed and disposed of by the Calcutta Bench of this Tribunal.

3. Taking into consideration such arguments advanced by Mr. Dutta, M.A. No. 82/2017 for joint prosecution is allowed and disposed of.

4. So far as the main O.A. is concerned, Mr. S.K. Dutta submitted that the applicants are all retired Upper Division Clerks from Vehicle Depot, Panagarh/Ammunition Depot, Panagarh and they all joined the department as Gr. 'D' staff initially and subsequently got appointed as Group - C' staff



against 10% quota after going through an examination and such appointment of the applicants to the Gr. 'C' and 'D' category was treated as promotion and they were denied financial upgradation and other employees who got appointment from Gr. 'D' to Gr. 'C' were also denied the benefits of financial upgradation treating such appointment as promotion. Some of the erstwhile colleagues of the applicants approached this Tribunal challenging such treatment of appointment from Gr. 'D' to Gr. 'C' as promotion instead of Direct Recruitment by filing O.A. No. 686 of 2009 which was subsequently disposed of holding that the appointment from Gr. 'D' to Gr. 'C' as Direct Recruitment instead of promotion which was upheld by High Court of Calcutta and the Hon'ble Apex Court.

5. The applicants being similarly situated, requested for similar treatment and to grant benefits of upgradation but their case has been turned down by a communication dated 30.11.2016 enclosing the decision of the Directorate General dated 8.11.2016.

5. Mr. Dutta submitted that when the similarly situated employees have already got the benefits in pursuance of the Court order i.e. order passed by the Calcutta Bench of this Tribunal on 21.6.2012 and order passed in O.A. No. 686 of 2009 dated 10.9.2012 and the said order was also upheld by the Hon'ble High Court of Calcutta and Hon'ble Supreme Court of India after which the benefits have been extended to similarly situated employees, but in gross violation of the principles of natural justice, the present applicants, who were similarly situated employees, were not granted the said benefits. By stating so, Mr. Dutta submitted that it is a case of gross discrimination and the respondents should be directed to consider the case of the applicants in line with his counterparts who have received the benefits.

6. On the other hand, Mr. P. Mukherjee, Ld. Counsel for the official



respondents submitted that the order passed by this Tribunal which was already affirmed by the Hon'ble High Court of Calcutta and Hon'ble Supreme Court of India is a judgement in *personam* and not a judgment in *rem* and hence the said judgment is not applicable to the instant applicants. So also Mr. Mukherjee submitted that the applicants have not come up with a concrete proof that they are similarly situated employees to those who have filed O.A. No. 686 of 2009. In pursuance of the order passed in O.A. 686 of 2009 benefits were extended to those applicants.

7. On the other hand, Mr. S.K. Dutta, Ld. Counsel for the applicants submitted that whether the applicants are similarly situated employees or not that has to be first examined by the official respondents. He further submitted that as the applicants' grievance is more or less specific, hence a direction may be granted to the respondents to examine the issue in *toto* and if the applicants are found to be similarly situated with those persons who have been granted the said benefits, the said relief/benefits be extended to the instant applicants in the O.A.

8. We think it will not be prejudicial to either of the sides if such an order is passed by directing the respondents to consider the representation stated to have been so preferred by the applicants under Annexure 'A-6' and examine, within 4 weeks from the date of receipt of a copy of this order, *as to l*  
*whether* *had* *based* *l*

*l* Whether they are similarly situated employees to those who have filed O.A. No. 686 of 2009 which was disposed of on 10.9.2012 *based* *l* upon which *l* the benefits were extended to the applicants. If the applicants in the instant O.A. are found to be similarly situated employees, then the same benefits may be extended to them within a further period of two months from the date of such consideration.

9. With the aforesaid observation, this O.A. stands disposed of.

*W.L*

10. As prayed for by Ld. Counsel for the applicant, a copy of this order be handed over to Ld. Counsel for both sides.

(Dr. Nandita Chatterjee)  
Administrative Member

(A.K. Pattnaik)  
Judicial Member

SP