

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.1012/2018

New Delhi this the 30th day of July, 2019

HON'BLE MS. NITA CHOWDHURY, MEMBER (A)

J.P. Phogat, aged 61 years
S/o Chandgi Ram,
Retired as Deputy Director/Zonal Director,
From the office of Central Board for
Workers Education,
New Delhi.
R/o H.No.381, Sector 6, Bhadurgarh (Haryana) ..Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India through the Secretary,
Ministry of Labour & Employment,
Govt. of India, Shram Shakti Bhawan,
New Delhi.
2. The Chairman,
Central Board for Workers Education,
Jamnagar House, 7/10, R.No.21 & 22,
Man Singh Road,
New Delhi-1.
3. Deputy Director (HQ),
Dattonpant Thengadi National Board of Workers
Education and Development,
Ministry of Labour & Employment,
Govt. of India, North Ambazari Road,
Near V.N.I.T Gate, Nagpur-440033. ..Respondents

(By Advocate: Shri Ch. Shamsuddin Khan)

ORDER (ORAL)

This OA has been filed by the applicant claiming the following
reliefs:-

“(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 08.09.2017 (Annexure A-1) declaring to the effect that the same is illegal, arbitrary and discriminatory and consequently pass an order directing the respondents to release all the retirement benefits on the basis of last pay drawn by the applicant on revised pay scale granted as per the order dated 28.05.2008 with all the consequential benefits with interest @ 18% P.A.

(ii) That the Hon’ble Tribunal may graciously be pleased to pass an order directing the respondents to grant the interest on all the delayed payment of retirement benefits from the date of retirement to the date of payment @ 17% P.A. including leave encashment.

(iii) Any other relief which the Hon’ble deem fit and proper may also be granted to the applicant”.

2. The facts, in brief are that the applicant was initially appointed on 19.06.1984 to the post of Education Officer in Central Board for Workers Education (CBWE). Subsequently, in the year 2005, he was promoted to the post of Regional Director. Further, the respondent No.2, vide order dated 10.10.2014 promoted the applicant along with 2 other persons to the post of Deputy Director/Zonal Director on ad hoc basis. Finally, the applicant retired from the same post of Zonal Director on 28.02.2017. To remove the pay anomaly to the post of Education Officer and higher posts and for seeking revised pay scale, **Central Board for Workers Education Officers’ Association (CBWE) and Another Vs. U.O.I. and Others** filed an O.A. No.566/2007 before the Hon’ble Central Administrative Tribunal, Calcutta Bench and the same was allowed

vide judgment dated 27.09.2007. The operative part of the same reads as under:-

“15. In view of the observation made above and submission of the Ld. Counsel for the respondents, we find sufficient merit in this OA. 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 OA is thus allowed with the aforesaid direction. No order to costs”.

3. In compliance of the aforesaid judgment, the respondents vide Office Memorandum dated 28.05.2008 (Annexure A-3), granted the revised pay scale to the Education Officers and the persons working on all other higher posts. The relevant para of the said order reads as under:-

“I am directed to refer to your DO letter No.Admn./10/63/02/648 dated 03.04.2008 on the subject mentioned above and to say that it has been decided with the approval of the competent authority in the Ministry, to implement the decision of the CAT dated 27.09.2007. Accordingly, you are requested to take necessary action in the matter. An Action Taken Report may also please be furnished to the undersigned”.

Thus, all the employees were granted the benefit of revised pay scale including the applicant which was challenged by the respondents before the Hon’ble Calcutta High Court in W.P.C.T.

No.85/2010 in which only notice was issued, but no stay was granted. Ultimately, on 17.12.2013, the following order was passed in CAN No.4818/2013 in W.P.C.T. of 85/2010:-

“This application for appropriate order has been filed on behalf of some of the retired employees of Central Board for Workers Education who are claiming implementation of the administrative order dated 28th May, 2008 regarding the removal of pay anomaly for the cadre of Education Officer in order to implement the order of the learned Tribunal in O.A. 566 of 2007 after adding the said employees as parties to the writ petition.

Having heard the learned Counsel of the respective parties and considering the facts and circumstances of this case, we are of the opinion that the applicants herein are vitally interested in the outcome of the pending writ petition. Therefore, the said applicants are added as respondents in the writ petition.

The learned Advocate-on-record of the writ petitioners is directed to amend the cause title of the writ petition in order to insert the names of the applicants herein as added respondents.

From the records we find that Central Board for Workers Education has issued administrative order on 28th May, 2008 for removing the pay anomaly in respect of the cadre of Education Officer in order to implement the order passed by the learned Tribunal in O.A. 566 of 2007.

Mr. Somenath Bose, learned Advocate representing the Union of India, however, submits that the Union of India should not be held responsible for making payment of any amount to the added respondents herein and the entire financial responsibility should be borne by the Board.

We are, however, not inclined to decide at this stage whether the Board will make necessary payment or the Union of India will take the responsibility for making such payment to the added respondents herein.

The retired employees who have been added as parties to the writ petition are, however, entitled to the financial benefits in terms of the administrative order dated 28th May, 2008 and the said benefits cannot be withheld by the authority concerned.

In the aforesaid circumstances, we direct the authorities concerned to take immediate appropriate steps for making necessary payment to the added respondents herein on implementation of the administrative order dated 28th May, 2008.

Needless to mention that the added respondents will also be entitled to receive arrear payment in terms of the said administrative order dated 28th May, 2008 which should also be released without any further delay but positively within a period of eight weeks from the date of communication of this order.

With the aforesaid observations and directions, this application for appropriate order stands disposed of.

There will be no order as to costs”.

4. The applicant has further submitted that in the year 2014, the respondents decided to reduce the pay of those persons who are retiring and also decided to recover the excess payment, for which some similarly situated persons, namely, Shri Sirpur Baghi & Others Vs. UOI & Others filed O.A. No.350/2014 before the Hon’ble Calcutta Bench of this Tribunal and the same was decided in favour of the applicants vide order dated 04.02.2015. In compliance of the same, the respondents implemented the judgment and took an undertaking from the petitioners that the recovery of overpayments will be made in case the decision of the Hon’ble Calcutta High Court is delivered in favour of the petitioners, i.e., Union of India and

Others. The respondents on their own have decided that this procedure be followed in similar cases vide order dated 17.07.2015 and more than 20 persons have been granted their retirement benefits including their pension in revised pay scale during the period from July, 2015 till January, 2017.

5. The applicant has further submitted that he retired on 28.02.2017 but got the payment of retirement benefits after a long delay without any rhyme and reason and now, vide impugned order dated 08.09.2017 (Annexure A-1), the respondents have decided to withdraw the earlier order dated 17.07.2015 with immediate effect meaning thereby that the respondents reduced the pay scale of the applicant and all other similarly placed persons at the time of retirement and fixed all the retirement benefits in the reduced pay scale in spite of fact that neither the judgment of the Tribunal has been stayed by the Hon'ble Calcutta High Court nor modified. The following amounts were paid to the applicant at the time of retirement:-

Item	Date of payment
Gratuity	25.10.2017
PF	July, 2017
Commutation	25.10.2017
GIS	21.11.2017
Pension	15.02.2018
Leave Encashment	Till date the same has not been paid.

6. The applicant has heavily relied on the letter dated 17.07.2015 passed by the Under Secretary to the Government of India

addressed to the Director, Central Board for Workers Education,
North Ambazari Road, Nagpur-440033, which reads as under:-

“To

The Director,
Central Board for Workers Education,
North Ambazari Road,
Nagpur-440033.

Sub: Order dated 4.2.2015 passed by CAT, Calcutta in
O.A. No.350/00067 of 2014 in the matter of Shri
Sirup Bagchi & Others retired employees of CBWE
in CAT, Calcutta Bench, Kolkatta.

I am directed to refer to CBWE's letter No.C-18018/34/2014/118 dated 30.06.2015 on the above mentioned subject and to say that Order dated 4.2.2015 passed by the Hon'ble CAT, Calcutta in O.A. No.350/00067 of 2014 in the matter of Shri Sirup Bagchi & Other retired employees of CBWE has been examined in the Ministry, and it has been decided to implement the Order dated 04.02.2015 passed by the CAT, Calcutta subject to the condition that if the appeal filed by CBWE as WPCT No.85 (W) of 2010 in Hon'ble High Court Calcutta challenging the Order of Hon'ble CAT, Calcutta dated 27.09.2007 in OA No.566/2007, which was implemented in the Board vide CBWE's letter dated 28.05.2008, is allowed by appellate court(s) including Supreme Court, then the necessary corrective action to reduce pension, other retiral benefits and recovery of over payments would follow accordingly.

2. The position stated in para 1 of above may specifically be mentioned by the CBWE while issuing the order to implement the Order dated 4.2.2015 in OA No.350/00067 of 2014 of Hon'ble CAT, Calcutta Bench. An undertaking may be may be obtained from the applicants that the recovery of overpayment will be made in case the decision of the Hon'ble High Court, Calcutta, in W.P. No. 85/2010 is delivered in favour of the petitioner, i.e., UOI and Others.

3. **You are also advised that this procedure is to be followed in all such similar cases.**

4. This issues with the approval of the competent authority”.

He has thus prayed that the OA be allowed with interest @ 18% p.a.

7. The respondents have filed their reply and reiterated all the points raised by the applicant in the OA. They have stated that Central Board for Workers Association is an autonomous body under the Ministry of Labour & Employment and gets grant-in-aid from the said Ministry and the service conditions of the staff are governed by Central Board for Workers Education (Staff & Conditions of Service) Regulations, 1962 of the Central Board for Workers Education. They have also relied on the judgment passed by the Central Administrative Tribunal, Kolkatta Bench in OA No.566/2007 on 27.09.2007 which the respondents implemented. Accordingly, the pay scale of the applicant in the post of Regional Director was fixed in the pay scale of Rs.12000-375-16500 by the 5th CPC. Thereafter, his pay was fixed in the pay scale of Rs.15600-39100 + Rs.7600/- as per 6th CPC. Ultimately, the applicant retired on 28.02.2017 from the post of Regional Director and was granted monthly basic Pension of Rs.15435/- which was reduced to Rs.9261/- w.e.f. 01.03.2017 vide PPO dated 4.10.2017 since the case is pending in the Hon'ble Calcutta High Court. They have thus that the OA be dismissed.

8. Heard the learned counsel for the parties and perused the pleadings on record.

9. The only controversy involved in this case is whether applicant is entitled to the revised pay in view of the order passed by the Hon'ble CAT Kolkatta in O.A. No. 566/2007 in the case of Central

Board for Workers Education Officers' Association (CBWE) and Another Vs. U.O.I. and Others on 27.09.2007 which was allowed in favour of the applicants. Thereafter, the respondents challenged the same before the Hon'ble Calcutta High Court where no stay was granted but ultimately, the Hon'ble Calcutta High Court passed an order on 17.12.2013 in favour of the respondents directing that the order dated 28.05.2008 passed in compliance of the order passed by the Tribunal in OA No.566/2007 be implemented. Moreover, the respondents vide their letter dated 17.07.2015 has clearly held that that the order of the CAT, Calcutta in OA No.350/00067 of 2014 in the case of Shri Sirup Bagchi and Others retired employees of CBWE in CAT, Calcutta Bench, Kolkatta has to be implemented in view of the Order dated 04.02.2015 passed by the CAT, Calcutta subject to the condition that if the appeal filed by CBWE in WPCT No.85 (W) of 2010 in Hon'ble High Court Calcutta challenging the Order of Hon'ble CAT, Calcutta dated 27.09.2007 in OA No.566/2007, which was implemented in the Board vide CBWE's letter dated 28.05.2008, is allowed by appellate court(s) including Supreme Court. But till date no final order has been passed by the Hon'ble Calcutta High Court in W.P. No.85/2010. Moreover, it has been specifically stated by the Hon'ble High Court that **"the retired employees who have been added as parties to the writ petition are, however, entitled to the financial benefits in terms of the administrative order dated 28th May, 2008 and the said**

benefits cannot be withheld by the authority concerned. In the aforesaid circumstances, we direct the authorities concerned to take immediate appropriate steps for making necessary payment to the added respondents herein on implementation of the administrative order dated 28th May, 2008. **Needless to mention that the added respondents will also be entitled to receive arrear payment in terms of the said administrative order dated 28th May, 2008 which should also be released without any further delay but positively within a period of eight weeks from the date of communication of this order”.**

10. Further, the respondents counsel while arguing the matter only kept repeating that they do not want to implement the order dated 28.05.2008 but no reasons have been given. Moreover, when a letter has been issued by the respondents and there is a clear cut direction by the Hon’ble Calcutta High Court to implement the same, it has to be implemented in true letter and spirit.

11. Thus, seen from any angle, the applicant is entitled to the relief sought for.

12. In view of the above, OA is allowed. The respondents are directed to refix the pay of the applicant on the basis of the last basic pay drawn by him and basic pension of Rs.15435/- and revise his pension and other retiral dues after taking an undertaking from the applicant that the recovery of overpayments will be made in case the decision of the Hon’ble Calcutta High Court

is delivered in favour of the petitioners, i.e., Union of India and Others within a period of 6 weeks from the date of receipt of a certified copy of this order. Simple interest at GPF rates will be payable, if found due, after calculating the same as per Pension Rules for the period beyond 17.07.2015 from the date when the respondents had themselves issued orders in which it was directed that this procedure is to be followed in all such similar cases. No costs.

(NITA CHOWDHURY)
MEMBER (A)

Rakesh