

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH, KOLKATA****O.A. No. 547 of 2013**

Present : Hon'ble Justice Shri Vishnu Ch. Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

Arabinda Ghosh,
Aged about 68 years,
Son of Late D.N. Ghosh,
was working for gain as Chargeman,
Grade – I, with Ex. P. Number 824632
In Gun & Shell Factory,
Cossipore of resident 24/1,
J.N. Banerjee Lane,
Kolkata – 700 036.

..... Applicant.

Versus

1. Union of India
Through the Secretary,
Ministry of Defence (Production),
New Delhi – 110 001.
2. The Chairman,
Ordnance Factory Board,
10-A, Auckland Road,
Kolkata – 700 001.
3. The General Manager,
Gun & Shell Factory, Cossipore,
Kolkata – 700 002.

..... Respondents.

For the Applicant : In person

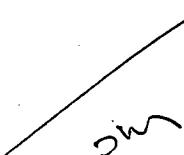
For the Respondents : Ms. M. Bhattacharyya, Counsel

Date of hearing : 20.09.2016

Date of order: 21. 9. 2016

ORDER**JAYA DAS GUPTA, AM:**

The applicant Sri Arabinda Ghosh has approached this Tribunal under Section 19 of Administrative Tribunals Act, 1985 seeking the following reliefs:-



"a) To issue direction upon the respondent to give due promotion as Supervisor "A"/Chargeman II(T) on and from 01-07-1973 in the scale of Rs.425-700/- according to the option of the Hon'ble Judges in case W.P.C.T. No.261 of 2010 after a close look to the appeal made to the authority on April 29, 2004 and the special pay-scale in terms of the circular dated 01-11-1977 wherein the Director General/Respondent No.2 asked the respondent No.3 to take action for regularized promotion on the date of reaching pay Rs.175/- per month;

b) To issue the direction upon the respondent No.2 to calculate dues including O.T. also from the very date of the applicant's promotion on 1-7-1977 according to Factory Rules which will may come up around Rs.9700/- per month on the retirement on 31-10-2005;

c) To issue direction upon the respondents to cancel, set aside the letter dated 18-7-2012 forthwith;

d) To issue a direction to the respondent No.2 to pay dues with the rate of 9% compound interest;

e) Cost of litigation may be paid forthwith;

f) Any other order or orders as the Ld. Tribunal deem fit and proper."

2(a) The fact of the case is that the applicant was categorized from 01.07.1968 in the Industrial Establishment of Gun & Shell Factory, Cossipore in the erstwhile post of Grade A of Tool Setter Trade in the pre-revised scale of Rs.150-180 which was revised to Rs.320-400 w.e.f. 01.01.1973.. The erstwhile post of Supervisor Grade A (Technical) was merged with Chargeman Gr.II (Technical) w.e.f. 01.01.1980 which were to be filled up from amongst the following feeder posts carrying different scales of pay as given hereinafter:-

(a) Supervisor "B" Technical (Rs.175-240 and Rs.150-240)

(b) Highly Skilled Workman (Rs.175-240)

(c) Examiner Grade "A" or Viewer Grade "A" [Rs.150-180 (2nd CPC pay scale)]

2WZ

3. Pursuant to the orders passed by the Hon'ble High Court the Ordnance factory Board modified its earlier order and directed that for the purpose of preparing the dovetailed seniority list for consideration of promotion to supervisor Gr. "A" (Technical), the date of drawing Rs.175/- would not be taken into account as the basis of the determination of seniority of eligible personnel. The individuals concerned would be included in the dovetailed seniority list in the order of the dates of seniority in the grades of Supervisor Gr.B (Technical), Highly Skilled Workman, Examiner 'A'/Viewer 'A' and other Skilled Workman 'A' grade after completion of 7 years' service in the grade. Accordingly the Ordnance Factory Board formulated the promotion policy vide its communication dated 12.02.1980 for the purpose of filling up the post of Chargeman Gr.II(Technical).

4. The applicant alongwith few others were considered for promotion to the post of Chargeman Gr.II(Technical) in the pre-revised pay scale of Rs.425-700 on and from 07.05.1980 on notional basis and on 12.03.1982 on regular basis. Consequent upon such notional promotion the applicant had been granted promotion to the post of Chargeman Gr.I(Technical) in the pre-revised scale of Rs.550-700 on and from 12.09.1991 on notional basis and on and from 19.06.1992 on regular basis.

5. Thereafter a question of law arose as to whether by issuance of an administrative instruction under the letter dated 12.02.1980 it was legally possible to confer additional benefit of some of the category of workers i.e. Skilled 'A' Grade Workman beyond the provisions of Statutory Rules. This question attained its finality in A.P. Sarathe's case in Civil Appeal No.5003-5004 of 1990 where the Apex Court vide its order dated

30/2

19.09.2000 upheld the order of Hon'ble C.A.T., Jabalpur Bench quashing down the additional benefits of the Skilled Grade 'A' Workman. The order of Hon'ble Apex Court is set out below:-

"IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 5003-04 OF 1990.

Union of India & Ors. Appellant (s)

Versus

A.P. Sarathe & Ors. Respondent (s)

WITH

C.A. NO. 5030 OF 2000
(Arising out of SLP (C) No. 17359/90)

ORDER

Special Leave granted in SLP(C) No. 17359/90.

These civil appeals are by the Union of India and the direction of the Central Administrative Tribunal (for short the Tribunal) is under challenge in both these matters.

In C.A. Nos. 5003-04/90, the question for consideration is whether the appropriate authority was justified, by way of an administrative instruction, in putting some condition to the 8th category of employees from the feeder category to be promoted to the post of Chargeman Grade-II. The promotion is made from Supervisor Grade B to Chargeman Grade-II.

The Tribunal, on consideration of the entire material, has come to a conclusion that the service conditions of these employees are governed by statutory rules and the statutory rule not having put any additional benefit for the 8th category of people for the purpose of promotion to the Chargeman Grade-II, the said additional benefits conferred have to be struck down. The Union of India assails the said order on the ground that on consideration of the relevant materials, the employer thought it appropriate to confer certain additional benefits and it is to achieve that objective by way of an administrative instruction the additional benefits have been conferred for which there is no embargo on the statutory rule and, therefore, the Tribunal was in error in striking down the said administrative circular. We are unable to accept this submission of the learned Additional Solicitor General, inasmuch as it is conceded before us that the service conditions of these employees are governed by a set of statutory rules framed under proviso to Article 309 of the constitution of India and once all the 8 categories belonging to the feeder category are entitled to be promoted to the post of Chargeman Grade-II then, unless the rules are amended, it would not be permissible for the employer to confer any additional benefits in a particular group of employees within those eight group of employees by way of an administrative instruction. In our view, therefore, the Tribunal was wholly justified in striking down the aforesaid Government Memorandum and we see no justification for our interference with the said order of the Tribunal. We accordingly dismiss Civil Appeal Nos. 5003-04/90.

So far as the Civil Appeal arising out of SLP(C) No. 17359/90 is concerned, it transpires that in implementing the earlier direction of the Tribunal, the employer had of necessity made some reversion from the post of Chargeman Grade-II. The reverted employees having approached the Tribunal, the Tribunal has interfered with the said order of reversion, *inter alia*,



on the ground that there was no direction in the earlier order to effect reversion and, therefore, it was not open for the Union Government to revert any of these employees. This reasoning of the Tribunal, on the face of it, is erroneous. If the Tribunal gives certain directions to the employer and in implementing the said directions as a necessary corollary, some employees already promoted would stand reverted, then such reversion would neither be said to be penal nor can it be nullified on the ground that in the earlier order there was no such direction for reversion.

In the aforesaid premises, the impugned order of the Tribunal cannot be sustained. We accordingly set aside the said order of the Tribunal and allow this appeal.

Mr. Muralidhar, the learned counsel appearing for the reverted employees, however, contended that it may not be necessary for the employer to revert any person and all the reverted persons could be re-adjusted in the promoted category notwithstanding the implementation of the earlier order of the Tribunal. Undoubtedly the power lies with the employer and if the employer can readjust these reverted people within the promoted category after implementing the earlier direction of the Tribunal, then the employer can do so, but the reverted persons cannot claim any right to the promoted post.

Sd/-

.....
(G.B. Pattanaik)

Sd/-

.....
(U.C. Banerjee)

New Delhi,
September 13, 2000."

6. On the basis of this judgment of Hon'ble Apex Court, the C.A.T., Calcutta Bench disposed of an analogous case being O.A.No.794 of 1992 filed by **Chunilal Bhattacharya and Others**. The present applicant was impleaded as proforma respondent to the said O.A.No.794/1992 wherein he neither contested the said O.A. nor filed any appeal against the order of C.A.T. dated 26.02.2001. In order to implement C.A.T's order dated 26.02.2001 passed by C.A.T., Calcutta Bench in reliance of the A.P. Sarathe's judgment of Hon'ble Apex Court, the respondent authorities had to cancel all the promotions to the post of Chargeman Gr.II(T) on or after 12.02.1980 from Skilled Grade "A" Workman after recasting the relevant seniority list. In the above referred case of **Chunilal Bhattacharya and Ors.** the Hon'ble C.A.T., Calcutta Bench had also directed on 26.02.2001 that the respondents should consider the case of the applicants thereof and

GW

try to readjust the reverted people within the promoted category as far as practicable. While implementing the aforesaid order it was not possible to readjust the reverted people within the promoted category since the required number of vacancies were not available at that point of time at Gun and Shell Factory, Cossipur. However, such scope came up on 30.08.2003 when Ordnance Factory Board as a policy matter granted one time relaxation for utilization of higher vacancies and directed all Ordnance and Ordnance Equipment Factories to consider the promotion of Chargeman Gr.II(T) who were holding the said post since 10.05.1993. Accordingly the applicant and other 148 persons holding the post of Chargeman Gr.II were promoted to Chargeman Gr.I(T) in the pay scale of Rs.5500-9000 on and from 30.08.2003. However, in the meanwhile, the applicant was awarded financial upgradation in the aforesaid pay scale of Rs.5500-9000 on and from 09.08.1999 in terms of ACP Scheme.

7. In a nutshell, the factual position is that earlier benefits granted in 1992 to the applicant had to be reviewed in view of the implementation of C.A.T.'s order dated 26.02.2001 in **Chunilal Bhattacharya & ors.** i.e. the case which was disposed of in the light of the Hon'ble Apex Court's Order in **A.P. Sarathe's case.**

8. The present applicant again filed an Original Application bearing No.567 of 2005 before C.A.T., Calcutta Bench. The Main grievance of the applicant is in the matter of decrease in the basic pay which was indispensable consequent upon change of effective dates of promotion to Chargeman Gr.II and I(Tech.) after implementation of the order of C.A.T. in the case of **Chunilal Bhattacharya & Ors.** The pay fixation of the applicant in the post of Chargeman Gr.II(T) was earlier done on 07.05.1980



on notional basis and in the post of Chargeman Gr.I(T) on and from 12.09.1991 on notional basis whereas after implementation of the order of C.A.T in **Chunilal Bhattacharya & Ors.**, pay fixation of the applicant as Chargeman Gr.II(T) was revised from 10.05.1993(instead of 07.05.1980) and as Chargeman Gr.I(T) from the date of 30.08.2003(instead of 12.09.1991). In the above O.A.567 of 2005, the case of the applicant was dismissed. Being aggrieved the applicant filed a writ petition no.W.P.C.T.261 of 2010 before the Hon'ble High Court, Calcutta . Said Writ Petition was disposed of by the Hon'ble High Court, Calcutta vide order odated 20.12.2011 upholding the order dated 26.04.2010 passed by the Hon'ble Tribunal directing the authorities to finalise the retiral benefits as well as pension if not already done. The Respondent authorities have submitted that retiral benefits had already been made as per his entitlement when the applicant superannuated from service on 31.10.2005. In compliance of the direction given by Hon'ble High Court, a letter dated 30.03.2012 intimating the factual position was issued to the applicant. Such order dated 30.03.2012 at Annexure R-11(page 87 to reply) is set out below:-

"No.2009/WPCT-15/10/AG/CDLC/GSF

Dated: 30-03-2012

To
Shri Arabinda Ghosh,
S/O Late D.N. Ghosh
24/1, J.N. Banerjee Lane
Kolkata – 700 036.

Sub: WPCT 261 OF 2010
Arabinda Ghosh –Vs- UOI & Ors.
Ref: Your letter No. nil dated 13.03.2012.

The above matter has been disposed of by the Hon'ble High Court, Kolkata under Judgement & Order dated 20.12.2011 upholding and affirming the Judgement & Order dated 26.04.2010 passed by the Hon'ble Tribunal with the direction to finalize the retirement benefit as



well as pension and extend the same as per entitlement, if not already done.

In compliance with the direction given by the Hon'ble High Court, the records of your case has been examined and it has been observed that as per your entitlement, all the retiral benefits including the pension has already been made while you were superannuated from service on 31.05.2005. Hence, the direction given by the Hon'ble High Court under judgement & Order dated 20.12.2011 has already been implemented.

(SEEMA GUPTA)
JOINT GENERAL MANAGER
FOR GENERAL MANAGER"

9. It also appears from the records in reply at Annexure R-14 that calculation sheet for payment of retiral benefits have been sent to the applicant vide order dated 18.07.2012. Annexure R-14(page 117-121 of O.A. is quoted herein below:-

(i) "FROM:THE GENERAL MANAGER" Dated: 18/07/2012

To
Shri Arabinda Ghosh
S/O Late D.N. Ghosh
24/1, J.N. Banerjee Lane,
Kolkata – 700 036

Dated: 18/07/2012

Sub : Forwarding of calculation sheets for terminal benefits.

Ref CPAN NO. 698 of 2012

Calculation sheets of following bills are forwarded herewith as per order of Hon'ble High Court.

<u>Bill no</u>	<u>Amount</u>
1. 37-GP/Final/Retd/NG?AG/Bill dated 30.9.05	Rs. 78606.00
2. 38-CGEGIS/Retd/NG/AG/Bill dt. 30.9.05	Rs. 22704.00
3. 511-NG/NIE/FUZE/LS dated 2.9.05	Rs. 122778.00
4. 789/NG/NIE/FUZE/ARR DA & DIFF OF LS dated 27.10.05	Rs. 4674.00

In this connection it is stated that consolidated amount of Rs. 224088.00 against bills mentioned at Sl. No. 1, 2 and 3 have been paid to you on 31.10.2005 vide Cheque No. 447047 dated 31.10.2005 and the remaining amount of Rs. 4674.00 have been collected by you from Cash Office on 8.12.05.

gwt

(SURABHI SINHA)
ASSTT. WORKS MANAGER
FOR GENERAL MANAGER"

(ii)

"CALCULATION SHEET
FOR FINAL SETTLEMENT OF G.P.F. ASSETS

M/o Sri/Smt <u>Arabinda Ghosh</u>	Designation <u>c/m-1</u>	Section <u>Fure</u>
No. <u>524632</u>	G.P.F. A/C No. <u>748007</u>	
Date retirement <u>31.10.2005</u>	Bill	No.37-GP/Final/Retd/NG/AG
<u>30.09.2005</u>		Date
Opening balance for the financial year 2005 – 2006		Rs. 50420.00

Month	Subscription	Refund Rs.	Final withdrawal Rs.	Progressive balance Rs.
April '06	5000			55420
May '06	5000			60420
June '06	5000			65420
July '06	5000			70420
Aug '06	5000			75420
Sept '06				75420
Oct '06				75420
TOTAL	25000			477840

Opening balance	Rs. 50420.00
Subscription	Rs. 25000.00
<u>Interest</u>	<u>Rs. 3186.00</u>
Payable amount	Rs. 78606.00

(SURABHI SINHA)
ASSTT. WORKS MANAGER
FOR GENERAL MANAGER"

(iii) "CPAN NO. 698 OF 2012 (Arising out of WPCT No.261/2010),
Arabinda Ghosh-Vs-UOI & Ors.

Shri Arabinda Ghosh, Ex-Ch/Man, P/No.824632

Leave Salary on superannuation

Basic Pay	7950	EL	264	Days
D. Pay	3975 (50% of Basic Pay)			
DA @ 17%	2027 (Basic Pay + D. Pay)*	17%		
Total	13952			

Leave Salary Calculation: (Rs.13952/-)* 264 / 30

LS Payable 122778 (B/No.511-NG/NIE/FUZE/LS Dt.02/09/2005)

dw

Bill passed by Local Accounts office
Vide Cheque slip No.995486 Dt.28-10-2005

DA ARREAR AND DIFF OF Leave Salary due to enhancement in DA rate from 17% to 21% from July-2005

BASIC PAY	D.PAY	DA DUE	DA DRAWN	DIFF PAYABLE	LS DUE	LS DRAWN	DIFF PAYABLE
7950	3975	2504	2027	477	126975	122778	4197

NET PAYABLE 4674 (B/No.789-NG/NIE/FUZE/ARR DA & DIFF OF LS
Dt.27-10-2005)

Bill passed by Local Accounts office
Vide Cheque slip No.995560 Dt.08-11-2005"

"CALCULATION SHEET"

Sri Arabinda Ghosh, C/M., P.No.824632 has retired from service w.e.f. 31.10.2005 (A/N). He was the member of CGEGIS @ Rs.60.00 per month w.e.f. 01.01.2005. He has been promoted to C/M-i. (NG, Gr.-B) w.e.f. 19.06.1992

Prior to that he was the member of CGEGIS @ Rs. 30.00 per month w.e.f. 01.01.1982, promoted to Tool Setter H/S w.e.f. 18.06.1979.

As per CGEGIS ready reckoner for the year 2005 @ Rs.10/- per month up to 31-12-1989 and Rs. 15/- per month after 01.01.1990 of Gr.-"D" category. The total accumulated amount is:

As Group D Rs. 112442X2 = Rs. 22488.00
(w.e.f. 01.01.1982)

As Group B Rs. 108X2 = Rs. 216.00
(w.e.f. 01.01.2005)

TOTAL = Rs. 22704.00

(Rs. Twenty two thousand seven hundred four only.)

(SURABHI SINHA)
ASSTT. WORKS MANAGER
FOR G.M., G.S.F."

LMC

(iv) "FROM: THE GENERAL MANAGER

Dated 21-07-2012

To
 Shri Arabinda Ghosh,
 24/1, J.N. Banerjee Lane,
 Barahanagar,
Kolkata – 700036.

Sub: Forwarding of calculation sheet in connection with
 pensionary benefits.

Ref: CPAN No. 698 OF 2012 (arising our of WPCT No.
 261/2010), Arabinda Ghosh –Vs- UOI & Ors.

As per the Judgement & Order dated 22.06.2012 by the Hon'ble High Court, Kolkata the calculation sheet in connection with pensionary benefits as notified in the PPO vide No. C/Fys/18442/2005 dt. 01.08.2005.

The above PPO has already been forwarded to your respective Bank with endorsing a copy to you. This is for your information please.

Enclose: Calculation Sheet for
 Pensionary benefits (2 sheets)

(SURABHI SINHA)
 ASSTT. WORKS MANAGER/ADMIN.
 FOR GENERAL MANAGER"

10. Since as per Hon'ble High Court's order, all retiral benefits have been paid to the applicant based on pay fixation from appropriate dates as per Hon'ble Apex Court, there remains no point to be adjudicated further.

11. The O.A. lacks merit and is dismissed . No cost.

(JAYA DAS GUPTA)
 Administrative Member

(JUSTICE V.C. GUPTA)
 Judicial Member

sb