

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Mrs. Urmita Datta (Sen), Officiating Chairperson and Member (J).

Case No. CCP – 75 of 2012 (OA – 2561 of 2006)

Ashok Kumar Sain - VERSUS – Mr. H. K. Dwivedi, Pr. Secy., Finance Deptt., Govt. of W.B.

Serial No. For the Applicant : Mr. G.P. Banerjee,
and Mrs. S. Agarwal,
Date of order Mr. K. Bera,
15 Advocates
02.09.2022

For the Contemnor : Mr. S. N. Ray,
O.P.(s) Mr. B.P. Roy,
Advocates

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 536 – WBAT / 2J-15/2016 dated 26th August, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

The instant application has been filed being aggrieved with the non-compliance of the order dated 03.08.2011, wherein the Tribunal held, inter alia:

“We have examined the copy of the judgement delivered in WPST 161/2011 and we find that WPST 161/2011 was preferred by petitioners of OA-1989/2005 which this Tribunal disposed of by its judgement on 25.3.2011. Now, on examination of the judgement of this Tribunal delivered in OA – 1989/2005, we find that identical issue has been raised in the present application of Ashoke Kumar Sain. We find that this Tribunal rejected the claim of the petitioners of OA – 1989/2005 and

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challenging that finding of the Tribunal, WPST 161/2011 was preferred and the Hon'ble High Court by its judgement has held that petitioners of OA – 1989/2005 are entitled to get the relief prayed in the original application.

Now, coming to the relief of the present application of Ashoke Kumar Sain, we do not notice any material change in the relief prayed for and that being the factual position, in view of the judgement of the Division Bench of the Hon'ble High Court recorded in WPST 161/2011, we hold that the present application should be disposed of in favour of the petitioner.

We, therefore, allow this petition and we direct the appropriate authority to grant the benefit of CAS in favour of the petitioner with all consequential relief within a period of 4 months from communication of the order.”

The Contemnors have filed one latest compliance report dated 25.04.2021 and the applicant has filed one objection to such compliance report today. As per the respondent, the very basis of the order of the Tribunal, the judgement passed in WPST dated 161/2011, which was further challenged before the Apex Court in SLP No. 3077/2012, which was heard on 29.07.2013. Subsequently that SLP was converted into Civil Appeal No. 6221/2013, wherein the Hon'ble Apex Court vide their order

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dated 24.04.2018 had disposed of the appeal in following manner:

“ In view of the above, we dispose of this appeal as follows:

(1) The employee of the respondent-organisation shall be granted the benefit of CAS/MCAS, as were granted to other government employees under the said Schemes.

(2) The amounts already paid to the employees under the Scheme of Merger shall be adjusted while setting the monetary claims under CAS/MCAS.”

In pursuance to the said order of the Apex Court, the respondent was granted CAS benefit vide Memo. No. H/Est/Gaz/P.F. No. A-193 / 1259 dated 17.07.2018. Therefore, as per the respondents as they have complied with the order, thus CCP may be dropped.

However, the counsel for the applicant has filed one objection and has submitted that after going through the order dated 17.07.2018, it was observed that the pay scale of the applicant has been lower down and on the basis of that lower down pay scale, CAS benefit was calculated and extended to him. Thereafter, in the light of the judgement of the Hon'ble Apex Court, he made a representation before the authority on 26.07.2018 and the representation was further forwarded by the Additional Director, Animal Resources Development, Haringhata Farm, Nadia to the Director, Animal Husbandry & Veterinary Services vide Memo. dated 30.07.2018 and in pursuance to that, the pay scale has been rectified vide Memo. No.

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202001134623384 dated 28.01.2020. However, the respondents have not calculated the CAS benefit on the basis of that re-fixed pay scale. Therefore, the order of the Tribunal has not been complied with in the letter and spirit of the order.

I have heard the parties and perused both the compliance report as well as objection filed by the counsel for the applicant. It is noted that though the respondent had granted some CAS benefit vide Memo. dated 17.07.2018 in compliance with the order of the Hon'ble Apex Court dated 24.04.2018. However, according to the applicant, while granting CAS benefit, they have lower down his pay scale. Therefore, the CAS benefit was not properly granted as per his entitled pay scale. Being aggrieved with, the applicant made representation to the authority for properly fixing his pay and subsequent CAS benefit. In view of that, the pay of the applicant has already been enhanced and re-fixed at certain pay scale. In this back ground, the CAS benefit ought to be calculated on the basis of the pay fixed on the basis of Memo. dated 28.01.2020. Further, the Hon'ble Apex Court never asked the authority to lower down the pay scale. However, it is observed that the authority themselves had upgraded pay scale by re-fixing his pay scale. Therefore, the calculation should be made on the basis of Memo. dated 28.01.2020. As the calculation made on 17.07.2018 was on the basis of the lower pay scale, which was subsequently rectified by the authority vide their order dated 28.01.2020, therefore, the benefit of CAS ought to be granted on the basis of the pay scale fixed as per Memo. dated 28.01.2020, which would be available from the date of earlier fixation of CAS benefit. Therefore, the Contemnor is granted one more chance to re-calculate the CAS benefit and to extend

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appropriate CAS benefit on the basis of the rectified pay scale and file a compliance report within the period. Let the matter be listed on **09.11.2022** under the same heading.

URMITA DATTA (SEN)
Officiating Chairperson and Member (J)

A.K.P.