

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson and Administrative Member.

Case No. –OA 111 of 2020

Ekramul Haque and others. - Versus - The State of West Bengal & Others.

Serial No. and Date of order	For the Applicants	: Mr. A. Roy Mukherjee, Mrs. S. Agarwal, Advocates.
<u>20</u> 28.06.2023.	For the State Respondents	: Mr. S. Ghosh, Advocate.
	For the Respondent No. 7 (Finance Department)	: Mr. G. P. Banerjee, Advocate.
	For the Principal Accountant General (A&E), West Bengal	: Mr. B. Mitra, Departmental Representative.

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt. II) dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5 (6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsels for the contesting parties, the case is taken up for consideration sitting singly.

The prayer in this application is for setting aside the impugned letters dated 25.04.2018 and 27.06.2018 and other similar memorandums and notifications which contains decisions not to release CAS / MCAS benefits in favour of the applicants.

Mr. A. Roy Mukherjee, learned counsel appearing on behalf of the applicants draws the attention to a letter written by the Deputy Secretary of the Department to the Director of Personnel & Ex-Officio Chief Engineer of the same Department in which it is informed that since the applicants were enjoying Scale No. 12, therefore, they are not entitled to get the benefits of 20 or 16 and 25 years benefits under CAS / MCAS. The letter also refers to a para -4 of Finance Department Memo. 5630-F(P) dated 28.10.2016 appearing at page -83. This notification states that *“the cases in which the employees concerned have already*

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retired and their pension cases have already been settled by the orders of the Hon'ble Court or otherwise, need not to be reopened".

Submitting on behalf of the applicants, Mr. Roy Mukherjee submits that the letter 881-WI/O/2P-09/.2017 dated 25.04.2018 rejecting the prayer of the applicants has been misconstrued by the respondents. The real interpretation of the Finance Department Memo. No. 5630-F(P) dated 28.10.2016. Further, this para -4 of the Finance Department Notification has been substituted by another Memorandum No. 3665-F(P)/FA/O/2M/187/16(N.B) dated 12.06.2017. The relevant para substituting para -4 of 5630-F(P) dated 28.10.2016 as follows :-

"On due consideration of the matter, the Governor has been pleased to order that the last sentence of para-4 of the Memo. No. 5630-F(P) dated 28.10.2016 be substituted by the following :

"However, the cases where pay have been fixed/settled under Court Orders with due concurrence of Finance Department irrespective of whether the concerned employees retired or in service shall not be reopened."

Explaining the meaning of the above substituted para, Mr. Roy Mukherjee submits that his applicants have genuine cases whose pays were earlier fixed by an order of the Hon'ble High Court, Calcutta. Therefore, even though retired, the cases of these applicants, as per the above paragraph, can be reopened.

Summing up his submissions, Mr. Roy Mukherjee submits that the primary reason why the respondents should reopen the cases of the applicants is that their pay was erroneously fixed by the respondents. Besides, the Finance Department Notification does not state clearly about the reopening of pay fixation cases which were erroneously fixed by the respondents.

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Responding on behalf of the respondents, both Mr. G. P. Banerjee and Mr. S. Ghosh, learned advocates submits that this application is not maintainable in this Tribunal for the fact that a contempt petition is pending in the Hon'ble High Court, Calcutta for non-compliance of an order of the Hon'ble High Court. The said order of the Hon'ble High Court against which the contempt petition was filed appears at pages 36 to 52 passed by the Hon'ble High Court, Calcutta in C.R. No. 11202(W) of 1981 and the order passed on 25.03.1991. However, this submission is not agreed by Mr. Roy Mukherjee for the reason that during pendency of the contempt petition CPAN No. 1423 of 2003 arising out of C.R. No. 11202(W) of 1981, a new cause of action has arisen after the respondents passed those two impugned orders at page 83 and 85 rejecting the claim for financial benefit after re-fixation of the pay.

Mr. Ghosh submits that this matter involves various points of law and since a contempt petition is still pending with Hon'ble High Court, Calcutta, this matter should be heard by a Bench comprising two Members (Judicial and Administrative) to which Mr. Roy Mukherjee does not agree.

To continue his submissions, Mr. Roy Mukherjee prays for accommodation.

Let the matter appear under the heading "Hearing" on 27.07.2023.

(SAYEED AHMED BABA)
Officiating Chairperson and Member (A)

S.M./C.S.M.