

18.08.2023
DL-65
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 13533 of 2023

**Bhabesh Chandra Mukherjee alias
Bhabesh Chandra Mukhopdhyay
Vs.
The State of West Bengal & Ors.**

Mr. Srinjay Sengupta,
Mr. Saurav Roy,
Mr. Narattam Acharyya,
Mr. Ankush Ghosh,
....for the petitioner.

Ms. Angana Dutta
.....for WBTCCL.

The petitioner seeks for benefits of third Career Advancement Scheme (CAS), pursuant to a memo dated March 13, 2001 vide no.3105-F of the Finance Department, Government of West Bengal. The petitioner was an employee of West Bengal Transport Corporation Limited (WBTCCL).

Under the 2001 memo, the petitioner claims to be entitled to three CAS benefits. The said memo was applicable to the State Government employees with effect from January 1, 2001. Under the said memo, a Government employee who completed 8 years of service without promotion would be given the first higher scale in relation to him (first CAS), second higher scale after completion of 16 years of service (second CAS) and the third higher grade/any non-

functional grade upon completion of 25 years of service (third CAS).

It is urged on behalf of the respondent/Corporation that the petitioner is only entitled to get two CAS benefits in terms of memo dated June 21, 1990 effective from April 1, 1989, issued by the Finance Department, Government of West Bengal.

Under the said memo of 1990, a Government employee who completed 10 years of service without any promotion would get the benefits of first CAS. He would also be entitled to second CAS benefit after completion of 20 years.

The petitioner got a functional promotion, but he did not get any CAS benefit.

Mr. Sengupta, learned counsel appearing on behalf of the petitioner submits that the Hon'ble Division Bench of this High Court clearly observed that the appellant in APO No.139 of 2021 (**Chandeshwar Singh vs. State of West Bengal & Ors.**) was held to be eligible for the benefits under 2001 memo.

The Hon'ble Division Bench held that the benefits payable to the employees of WBTCCL cannot be restricted to a non-existent memo dated June 21, 1990 vide no.6075-F. The State respondents were

estopped from relying on the said non-existent memo. Since in August 2007 the only memo that was in existence was the one dated March 13, 2001 effective from January 1, 2001, vide memo no.3015-F of 2001, the benefits of third CAS should have been considered to be given to the appellant. Therefore, it was held that there was no infirmity in the guidelines prepared by the Managing Director, WBTCCL assuring the employees of three CAS benefits, which were found to be legally existing on August 24, 2007. The Hon'ble Division Bench directed the Principal Secretary, Department of Finance to consider the grievance of the appellant on merits and in the light of the observations made in the judgment passed by the Hon'ble Division Bench.

Now, it is submitted by the parties that the Principal Secretary considered the case of the appellant and came to the finding that the memo dated March 13, 2001 was only applicable to the State Government employees and not the employees of the Corporation. Therefore, the third CAS benefits shall not be conferred upon the appellant.

It is also informed that contempt proceedings are pending against the Principal Secretary, Department of Finance, Government of West Bengal for not taking

into account the observations made by the Hon'ble Division Bench, in passing the reasoned order.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that justice will be sub-served by directing the Principal Secretary, Department of Finance/added respondent to consider the representation of the petitioner within 8 weeks from date upon giving the petitioner a personal hearing.

The reasoned order shall be passed and communicated within 2 weeks of passing thereof. In passing the reasoned order, the Principal Secretary will take into consideration the observations made by the Hon'ble Division Bench in APO 139 of 2021, vide judgment dated July 22, 2022.

It is made clear that the Principal Secretary will consider the observations of the Division bench regarding the fact that the memo dated June 21, 1990 has been held to be a non-existent memo and the State respondents were *estopped* from relying on a non-existent memo. The only existent memo in the eye of law is the memo dated March 13, 2001 conferring three CAS benefits on employees of the State. It has to be taken into consideration prior to passing the reasoned order.

Furthermore, this Court observes that clauses 5 and 6 of the memo dated March 13, 2001 have to be taken onto consideration. The aforesaid clauses of the 2001 memo are set out hereinafter:-

- “5. *Other provisions of the existing Career Advancement Scheme as contained in this Department No.6075-F, dt.21.6.90 which are not inconsistent with the provisions of this memorandum shall continue to remain in force.*
6. *This will come into effect from 1.1.2001.”*

With the directions aforesaid, **WPA 13533 of 2023** is **disposed of**.

All parties shall act on the server copies of this order duly downloaded from the official *Website* of this Hon’ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)