

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

**BEFORE:
HON'BLE JUSTICE RAJA BASU CHOWDHURY**

WPO/226/2016

**Goutam Roy Chowdhury
Versus
The State of West Bengal & Ors.**

For the petitioner : Mr. Debdutta Basu, Advocate

For the State : Mr. Deepnath Roy Chowdhury, Advocate

For the respondent : Ms. Deblina Chattaraj, Advocate
Corporation Mr. Angana Dutta, Advocate

Heard on : 19.12.2023, 09.01.2024, 16.01.2024,
18.01.2024, 24.01.2024 and 01.02.2024.

Judgment on : 9th May, 2024.

RAJA BASU CHOWDHURY, J:

1. The present writ petition has been filed, *inter alia*, praying for a direction upon the respondent no.4 to afford the petitioner with the benefits of second Carrier Advancement Scheme (in short, "CAS") with effect from February, 2013 in terms of the Memo No. 3015-F dated 13th March, 2001.
2. The petitioner is an employee of the respondent no.2 (hereinafter referred to as the "Corporation") and had joined the service of the Corporation sometimes in the month of February, 1997 as a clerk. It is the petitioner's case that after the Government of West Bengal

had taken a decision to implement CAS in the Corporation, the OSD and *Ex Officio* Deputy Secretary to the Government of West Bengal, Transport Department, by letter no. 2676-WT 7T/18/2005 dated 14th August, 2007 had called upon the Managing Director of the Corporation to implement CAS in the Corporation with effect from 1st August, 2007 in terms of the Memo No. 7552(80)F dated 4th September, 2000. Pursuant to and in terms of the aforesaid, the Corporation by following the Memo No. 3015-F dated 13th March, 2001, which contains elaborate guidelines for implementation of CAS, had awarded its employees the benefits of CAS.

3. Accordingly, the employees who had joined the service of the Corporation after 1994 on completion of eight years of service without getting any promotion became entitled to get the first benefit of CAS. Since, the petitioner had joined the Corporation in February, 1997 and was regularised in service as per Rules, the petitioner was granted the first benefit of CAS with effect from February, 2005, on completion of eight years of service. It is also the petitioner's case that most of the employees, who had previously joined the Corporation, were awarded the first and the second benefit of CAS upon completion of eight and sixteen years of service respectively, by treating 1986 to be the base year as provided for in the aforesaid guidelines.
4. According to the petitioner, the entire scheme for payment of CAS in terms of Memo dated 13th March, 2001 was made available to the eligible employees of the Corporation and several employees were

offered second CAS benefit upon completion of sixteen years of service in February, 2013. The petitioner contends that unfortunately, in his case despite the petitioner completing sixteen years of service in February, 2013, the second CAS benefit was not made available to him. In the facts noted above, the petitioner had made a representation dated 5th June, 2015 calling upon the Managing Director of the Corporation to release the benefit of the second CAS but the same did not yield any result.

5. Being aggrieved with the failure on the part of the Corporation to extend the second CAS benefits to the petitioner upon completion of sixteen years of service without promotion, the present writ petition has been filed.
6. Mr. Basu, learned advocate representing the petitioner, by placing reliance on the Memo dated 21st June, 1990 bearing No. 6075-F, issued by the Government of West Bengal, Finance Department, Audit Branch, submits that by the said Memo, the Government considering the career prospects of the employees holding various posts and services under the State Government and with the object to improve the standard of administration and career prospects of such employees at all levels, as announced in the Government policy statement dated 30th December, 1989, had caused implementation of CAS in respect of the Government employees. By referring to the Memo dated 4th September, 2000, he submits that the Joint Secretary to the Government of West Bengal, Finance Department had conveyed the Government's decision to extend the

benefits of CAS to all the employees of the various Corporations/undertakings covered by the Third Pay Commission in terms of the conditions laid down in the Finance Department Memo No. 6075-F dated 21st June, 1990, as applicable to the State Government employees. Later the Government of West Bengal, Finance Department, Audit Branch had introduced the Memo No. 3015-F dated 13th March, 2001 thereby, modifying the existing CAS for the State Government employees in terms of the said Scheme (hereinafter, "Memo of 2001"). The right of a Government employee to receive benefits of first CAS who had not been granted promotion, was brought down from ten years to eight years and the right to get the second CAS was brought down from twenty years to sixteen years. He has also placed reliance on the Memo dated 14th August, 2007 issued by the OSD and *Ex Officio* Deputy Secretary, Government of West Bengal on the subject of implementation of CAS in the Corporation which provided that in continuation of the departmental order dated 23rd August, 2006, the employees of the Corporation would be allowed CAS in accordance with the conditions mentioned in the Finance Department Memo dated 4th September, 2000.

7. According to Mr. Basu, pursuant to and in terms of the aforesaid, the Corporation had framed guidelines for implementation of CAS in respect of its employees, which was circulated vide covering letter dated 24th August, 2007. A perusal of the said guidelines would clearly and in no uncertain terms demonstrate that though 1986

had been taken to be the base year, however, CAS benefits have been offered on completion of eight years, sixteen years and twenty five years of uninterrupted service. He submits once, such a decision had been taken, it was not open to the Corporation to selectively grant benefits of CAS to some of its employees by ignoring the petitioner. According to Mr. Basu, several employees, *inter alia*, including the deponent to the affidavit in opposition filed on behalf of the respondent no.5 had been extended the benefits of the three CAS, by following the aforesaid guidelines. By placing reliance on the judgment delivered by the Division Bench of this Court in the case of **Chandeshwar Singh v. State of West Bengal & Ors.** in **A.P.O No. 139 of 2021** delivered on 22nd July, 2022, it is submitted that the Hon'ble Division Bench has already upheld the guidelines prepared by the Corporation and has held out that the State-respondents are estopped from relying on non-existing Memo No. 6079-F dated 21st July, 1990 since, the same stood modified vide Memo No. 3015-F dated 13th March, 2001. In the facts noted above, it is submitted that the petitioner should be offered with CAS benefits in terms of the aforesaid guidelines, which had been prepared in terms of the Memo of 2001.

8. *Per contra*, Ms. Chattaraj, learned advocate, submits that the Memo of 2001 is restricted to the State Government employees. The same cannot be applied to the employees of the Corporation. Simply because certain persons had been offered certain benefits, the same cannot entitle the petitioner to claim the same benefit especially

when the grant of such benefit is not in consonance with the policy decision taken by the State Government. By referring to Memo of 2001, it is submitted that the same only seeks to modify selectively certain portions of the Memo dated 21st June, 1990. The same does not have the effect of obliterating the Memo dated 21st June, 1990. According to Ms. Chattaraj, the Division Bench of this Hon'ble Court was aware that the aforesaid Memo of 2001 had not been implemented insofar as the employees of the Corporation are concerned and having regard to the same had directed the State Government to reconsider the issue. The same does not create any right in favour of the petitioner to claim any benefit under the Memo of 2001.

9. Mr. Roy Chowdhury, learned advocate representing the State-respondents, while adopting the submissions made by Ms. Chattaraj has added that it was never the intention of the State Government to extend the benefits of the Memo of 2001, which was reserved for the State Government employees, to the employees of the Corporation. By placing reliance on the notification dated 22nd August, 2002, it is submitted that the State Government had been categorical in highlighting that the modified CAS benefits arising out of the 2001 notification could not be made applicable to the employees of Corporation and other Government undertakings including autonomous bodies. According to Mr. Roy Chowdhury, once the notification dated 22nd August, 2002 was issued, there could be no ambiguity as regards the extension of CAS benefits to

the employees of the Corporation. Three CAS benefits were never made available to the employees of the Corporation. Simply because the Corporation had offered the benefits of the modified CAS to some of its employees, the same cannot create any legal right in favour of the petitioner to claim such benefits, especially when, the benefits extended, if at all, were wrongly extended. In support of his aforesaid contention, he has placed reliance on the judgments delivered in the case of ***State of Haryana & Ors. v. Ram Kumar Mann***, reported in **(1997) 3 SCC 321**. He has also contended that a policy decision taken by the Government cannot be interfered with by a writ court in exercise of its extraordinary writ jurisdiction under Article 226 of the Constitution of India. In support of his aforesaid contention, reliance has been placed on the judgment delivered in the case of ***New OS Industrial Development Authority & Anr. V. PDS & Ors.***, reported in **(2021) 17 SCC 435**, the case of ***Ekta Shakti Foundation v Government of NCT of Delhi*** reported in 2006 10 SCC 337 and, the case of ***Kastha Niwarak Grahnirman Sahakari Sanstha Maryadit, Indore v. President Indor Development Authority***, reported in **(2006) 2 SCC 604**. Having regard to the aforesaid, he submits that the petitioner cannot be entitled to the benefits of the modified CAS.

10. Heard the learned advocates appearing for the respective parties and considered the materials on record. Before proceeding to determine the issues involved in this petition, it may be relevant to note that the instant petition has been filed in the year 2016.

Despite an order directing exchange of affidavits passed on 15th March, 2016, no affidavit in opposition had been filed by the State-respondents, though the Corporation had duly filed its opposition. Although, the matter was taken up for final hearing on 4th April, 2023, since the State-respondents were not represented, this Court had directed service of notice on the State-respondents. Pursuant to the aforesaid and the advocate-on-record for the State of West Bengal on being notified, Mr. Nabakumar Das, learned advocate had appeared on 17th April, 2023. On the prayer of Mr. Nabakumar Das, as would appear from the order dated 2nd May, 2023, liberty was granted to State-respondents to produce the records. Since then, the State-respondents had produced certain photo copies of the records. The belated attempt made by the State-respondents to slip in an affidavit in opposition on the closing day of the hearing was, however, refused. As would appear from the records, as available on the file, by a memo dated 21st June, 1990, CAS was introduced for the State Government employees. Later by the Memo dated 4th September, 2000, the benefits of CAS as was made available to the Government employees vide Memo no. 6075-F dated 21st June, 1990, were also made applicable to the employees of various Corporations/undertakings, including the respondent no.5. There appears to be no difficulty up to this point. Subsequently, by the Memo dated 13th March, 2001, the Finance Department of the Government of West Bengal, Audit Branch was, *inter alia*, pleased to review the provisions of the existing Career Advancement Scheme as contained in the departmental Memo no.6075-F dated 21st June,

1990. In terms of the aforesaid memo, a Government employee who had completed eight years of service or longer without any promotion will move from the revised scale in relation to him to the first higher scale, and will get advancement to the second higher scale after a total period of service of sixteen years provided he/she is not promoted to any functional post borne in pay scale higher than the first higher scale or to any non-functional grade higher than the first higher scale. On completion of a total period of service of twenty five years without further promotion to any functional post borne in pay scale higher than the scale next above the first higher scale or to any non-functional grade higher than the scale next above the first higher scale, he will get the third and final advancement under the said scheme to the scale second next above the first higher scale. As such a Government employee was permitted to get the benefit of CAS under the amended provisions on the completion of eight years of continuous satisfactory service, and on completion of sixteen years was entitled to the second CAS benefit, and upon completion of twenty five years, to the third and final CAS benefit in terms and conditions appearing therein. As pointed out by the learned advocates appearing for the parties, as per paragraph 5 of the Memo of 2001, the other provisions of the CAS, as contained in the departmental Memo no.6075-F dated 21st June, 1990 which are not inconsistent with the provisions of the Memo of 2001 shall continue to remain in force. By referring to the aforesaid provisions, it is submitted that although, certain terms of the Memo dated 21st June, 1990 stood modified, yet the entirety thereof did

not get obliterated. What is, however, important is that by a communication in writing dated 14th August, 2007, the OSD and the *Ex Officio* Deputy Secretary of the Government of West Bengal informed the Managing Director of the respondent no.2 herein that CAS may be implemented in the Corporation in terms of the Memo dated 4th September, 2000 with effect from 1st August, 2007.

11. Although, a lot of argument had been advanced by the learned advocates representing both the respondent Corporation as well as the State-respondents that what was implemented for the employees of the Corporation was the Memo dated 21st June, 1990 and not the Memo of 2001, I, however, notice that the communication dated 14th August, 2007 only provides that the CAS would be implemented in accordance with the conditions mentioned in the Finance Department Memo No.7552(80)F dated 4th September, 2000. To morefully appreciate the purport of the Memo dated 4th September, 2000, the relevant portion of the said Memo is extracted hereinbelow:

“ MEMORANDUM

1. *Following the recommendations of the 4th Pay Commission in respect of various Corporations/Undertakings/Statutory Bodies etc covered under the Resolution No. 11833-F dated 27.11.1995. It was decided that the Finance Department Memo No. 3402-F, dated 6.4.2000 that in cases where benefits like Career Advancement Scheme etc have been extended without proper Government approval in violation of Chief Secretary's Circulars issued from time to time. Such benefits are to be ignored at the time of fixation of Pay in the revised scale. Subsequently a number of departments have*

brought it to the attention of the Government that the interest of the employees serving in different Corporations/undertakings etc had been very seriously affected by this decision of the government and should, therefore, be reviewed.

- 2. The matter was reviewed by the Government in the light of these issues.*
- 3. After careful reconsideration of the matter the Governor has been pleased to order as follows :-*

(a) The benefit of Career Advancement Scheme will be extended to the employees of all the Corporations/Undertakings etc covered by the 3rd Pay Commission. However, the benefit will be available only notionally with effect from 1.4.89 and the actual cash benefit will be available from 1.9.2000, and in all such cases while giving benefits under the Career Advancement Scheme, the scale benefits will be strictly in the next higher scale as per schedule of scale of pay in WBS ROPA RULES 1990, irrespective of whether such scale exists in the said Corporation/Undertakings etc or not.

It is further made clear that appointment to next higher scale as per Career Advancement Scheme shall be subject to all terms and conditions as laid down in Finance Department Memo No.6075-F, dated 21.6.90 as applicable of State Government Employees.

(b) In the case of various Corporations/ Undertakings etc, which have already awarded the C.A.S. benefits to their employees without Government approval the said benefit as are not inconsistent with the provisions of C.A.S 1990 for the State Government employees shall stand regularised.

(c) The cases of Corporations/Undertakings who have introduced new Pay scale of certain posts by way of

fresh creation/ upgradation without prior approval of the Government are also hereby regularised subject to the condition that such employees of those Corporation/Undertakings will not be eligible to draw the benefit of Career Advancement Scheme.”

12. Having regard to the aforesaid, it is crystal clear that the Government of West Bengal, Finance Department had taken a policy decision to implement CAS benefits to the employees of the Corporation and the extension of benefits was made subject to the terms and conditions as laid down in the Finance Department Memo No. 6075-F dated 21st June, 1990, as applicable to the State Government employees. The aforesaid memo further went on to provide that in case CAS benefits have been awarded by the Corporation to its employees without the approval of the Government and so long such benefits are not inconsistent with the provisions of CAS, 1990, the same shall stand regularised. The extension of the Memo dated 21st June, 1990 to the employees of the Corporation was thus, without any reservation. Incidentally, the self-same Memo dated 21st June, 1990 was modified by the Memo of 2001 with a rider that the other provisions of the existing CAS as contained in the departmental Memo No.6075-F dated 21st June, 1990 which are not inconsistent with the conditions of the Memo of 2001 shall continue to remain in force. Thus, while on one hand though the Memo dated 21st June, 1990 remains to be the basis, however, to the extent the same is inconsistent with the terms of the Memo of 2001, can no longer be made applicable. It may be

noticed here that even in the year 2007 when the OSD and *Ex Officio* Deputy Secretary of the Government of West Bengal had by Memo dated 14th August, 2007 directed implementation of the Memo dated 4th September, 2000, the same did not provide that it was Corporation specific. Perusal of the Memo dated 4th September, 2000 as noted above clearly demonstrates that the same is without any reservation and that the terms and conditions as laid down in the Finance Department Memo dated 21st June, 1990, as applicable to the State Government employees had been made applicable to the Corporation. Since, the Memo dated 21st June, 1990 stood modified to the extent provided for in the Memo of 2001, the State Government could not have ignored the same. As such, by reasons of the amendment of the Memo dated 21st June, 1990 by Memo dated 13th March, 2001, the direction to implement the Memo dated 4th September, 2000 vide, communication dated 14th August, 2007 was obviously to seek implementation of the revised Memo (i.e. Memo of 2001) and not the Memo which was inconsistent with the Memo of 2001. I find that the Division Bench of this Hon'ble Court in the case of ***Chandeshwar Singh v. State of West Bengal*** (supra), while interpreting the effect of the communication dated 14th August, 2007 as regards implementation of Memo dated 4th September, 2000, had concluded that the communication dated 14th August, 2007 cannot be restricted to be read in line with the provisions of the non-existent Memo No. 6075-F dated 21st June, 1990, and that the State-respondents are estopped from relying on

the non-existent Memo No.6075-F dated 21st June, 1990, since, as in August, 2007, it was only the Memo No. 3015-F dated 13th March, 2001 conferring three CAS benefits were in force. To morefully appreciate the above, paragraphs 15, 16 and 17 of the said judgment delivered by the Division Bench is extracted hereinbelow:

“15. *The attention of this Court is drawn by the appellants to the fact that when the Memo. Dated 14th August, 2007 was written by the Secretary, Department of Transport to the Managing Director of WBTC to award the benefit of CAS to employees of WBTC including the present appellants, at the relevant point of time the Memo. No. 6075-F dated 21st June 1990 stood amended by Memo. No. 3015-F dated 13th March 2001. In other words two benefits of CAS as conferred by Memo. No. 6075-F dated 21st June 1990 were replaced by three CAS benefits by the Memo. No. 3015-F dated 13th March 2001.*

16. *This Court finds it therefore difficult to ignore the point that at the relevant point of time when the letter dated 14th August 2007 was written to the Managing Director of WBTC there could be no existence of two CAS benefits as extended by the Memo. No. 6075-F dated 21st June 1990. However, there was in existence then, i.e. as on and from 14th August 2007, three CAS benefits in terms of the Memo. No. 3015-F dated 13th March 2001.*

17. *Accordingly, the communication dated 14th August 2007 cannot be restricted to be read in line with the provisions of a non-existent Memo. No. 6075-F dated 21st June 1990. The State respondents stand estopped from relying on a non-existent Memo. No. 6075-F dated 21st June 1990 since, as in August 2007 it was only the Memo. No. 3015-F dated 13th March 2001 conferring three CAS*

benefits which was in force. Accordingly, there could be no infirmity in the Guidelines prepared by the MD of WBTC assuring the employees of three CAS benefits which are found to be legally existing on that date.”

13. Although, both Ms. Chattaraj and Mr. Roy Chowdhury have submitted that the Memo dated 21st June, 1990 is not a non-existing Memo but the same had been modified by the Memo of 2001 and there is no difficulty in implementing the same in so far as the employees of the Corporation is concerned, I, however, notice that the Memo dated 21st June, 1990 can only be implemented save to the extent the same is not inconsistent with the Memo of 2001. It further appears that by the Memo of 2001, three CAS benefits have been afforded in place of two CAS benefits as provided for in the Memo dated 21st June, 1990. To the aforesaid extent of inconstancy, the Memo dated 21th June, 1990 stand superseded. The basis for introducing the Memo of 2001 was the recommendations of the Fourth Pay Commission. Since previously, the Memo dated 4th September, 2000 was introduced following the recommendations of the Fourth Pay Commission in respect of various Corporations/Undertakings and Statutory Bodies, there appears to be no rational in the argument that the Memo of 2001 could not have been extended to the employees of the Corporation, especially when the Corporation had not only implemented the said Memo of 2001 by framing appropriate guidelines and continued to extend the benefits thereunder for several years but had also implemented the recommendations of the Fourth Pay Commission.

Although, Mr. Roy Chowdhury by placing reliance on the Memo dated 22nd August, 2002, has attempted to claim that the extension of the CAS benefits under the Memo of 2001 was not permissible without the approval of the Government, I notice that the CAS benefits under the Memo of 2001 was extended to the employees of the Corporation, including the respondent no.4 for years together and as lately as in 2011. This apart, the Corporation in response to an application made under the Right to Information Act by letter dated 10th November, 2009 had confirmed implementation of the Memo of 2001 on the issue of awarding CAS benefits. The fact that the Government was aware of the extension of benefits under the Memo of 2001 to the employees of the various Corporations/undertakings and other autonomous bodies would corroborate from the Memo dated 22nd August, 2002 itself. In my view, such extension of benefits could not have been possible without the concurrence of the Government. If the Government has consciously, without according written approval, permitted extension of CAS benefits under the Memo of 2001 to the employees of the Corporation for over a decade from the date of issuance of the said Memo of 2001, it can only be presumed that the same had the tacit approval of the Government. Having thus, permitted the benefits under the Memo of 2001 to be extended to the employees of the Corporation, it is too late in the day for the Government to deny the other employees of the Corporation the CAS benefits under the Memo of 2001 who are yet to receive the same, without withdrawing

the said Memo. Extension of benefits to the employees of the Corporation for over a decade cannot be watered down by, *inter alia*, claiming that such extension of benefits was on the basis of a mistake.

14. Thus, once, the Government had permitted implementation of CAS benefits to the employees of the Corporation, as applicable to the State Government employees, unless the same is withdrawn, the respondents are bound to implement the same in so far as the employees of the Corporation are concerned. In any event, the aforesaid issue has been finally decided by the judgement delivered by the Division Bench of the Court in the case of **Chandeshwar Singh** (supra) and the same is binding on this Court.

15. In the facts noted hereinabove, by way of the present writ petition, the petitioner does not seek to interfere with the policy decision of the State Government. The Government having consciously permitted extension of benefits of the Memo of 2001 to the employees of the Corporation, cannot claim the same to be a case of oversight or a case of wrongful extension of benefits. As such the judgment delivered in the case of **Ekta Shakti Foundation** (supra), the case of **New OS Industrial Development Authority** (supra) and, the case of **President Indor Development Authority** (supra) does not assist the respondents. This is obviously not a case of interfering with the policy decision of the Government as the extension of benefits to the employees of the Corporation had the tacit approval of the Government. Neither in the facts of this case,

can it be said to be a case of wrongful extension of benefits to the employees of the Corporation. As such the judgment delivered in the case of ***State of Haryana*** (supra) also does not assist the respondents and is otherwise distinguishable on the facts noted hereinabove. I may note that a judgement is an authority for what it decides, a slight variation in facts may alter the final outcome.

16. It is true as pointed out by Ms. Chattaraj, the Hon'ble Division Bench had directed the Principal Secretary, Department of Finance to consider the grievance of the appellants on merits in the light of the observations made therein, without directing extension of three CAS benefits to the employees of the Corporation and Additional Chief Secretary, Finance Department by its order dated 22nd November, 2022, has held that the demand of the employees of the Corporation are not sustainable and not being justiciable had accordingly rejected the claim of the appellants.

17. In my view, order passed by the Assistant Chief Secretary cannot have the effect of diluting the observations made by the Hon'ble Division Bench. The Assistant Chief Secretary has no competence to sit in appeal over the order passed by the Division Bench. If Assistant Chief Secretary has purported to decline relief to the appellants in the said case on the basis of the observations made by him, the observations in so far as the same are inconsistent with the observations/directives of the Hon'ble Division Bench of this Court in the case of ***Chandeshwar Singh*** (supra) cannot be relied on by the respondents for setting up a defence.

18. In the light of the aforesaid, the writ petition stands allowed, the respondents are directed to afford the CAS benefits in terms of the Memo No. 6075-F dated 21st June, 1990, modified by the Memo No. 3015-F dated 13th March, 2001 to the petitioner. Let such benefits be made available within a period of four weeks from the date of communication of this order, or within four weeks from the petitioner becoming eligible to receive such benefits in terms of the observations made in this order, whichever is earlier.
19. There shall be no order as to costs.
20. Urgent Photostat certified copy of this order, if applied for, be made available to the parties on priority basis upon compliance of all formalities.

(RAJA BASU CHOWDHURY, J.)

Later

After this judgment is pronounced, Mr. Dipjyoti Chakraborty, learned Advocate for the State-respondents prays for stay of operation of the judgement and order.

The same is considered and refused.

(RAJA BASU CHOWDHURY, J.)