

Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-II, New Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 47/2011

Date of Passing Award- 07.02.2023.

Between:

The Zonal President,
All India CPWD,(MRM) Karamchari Sangathan,
House No. 4823, Gali No. 13, Balbir Nagar Extension,
Shahdra, Delhi.

Claimant.

Versus

The Executive Engineer, (Civil)
CPWD, Central Division -2, 20 Subash Road,
Dehradun.

Management

Appearances:-

Shri Satish Kumar Sharma

For the claimant.

(A/R)

Shri Chaman Sharma

For the Management

(A/R)

A W A R D

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of The Executive Engineer, (Civil)CPWD, Central Division -2, 20 Subash Road, Dehradun and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A)

of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42011/5/2011-(IR(DU)) dated 25.05.2011 to this tribunal for adjudication to the following effect:

“Whether the action of the management of CPWD, Dehradun in withdrawing financial benefits of ACP to the workman, Shri Puran Chand on account of non passing of trade test, is legal and justified? What relief the workman is entitled to ?”

Being noticed the claimant appeared and filed the claim statement stating therein that he was appointed as Beldar in CPWD w.e.f 22.02.1973 and superannuated from service on 30.11.2011. At the time of superannuation, he was working as a plumber. On 01.04.1977 he was confirmed in the post of beldar which was an unskilled category of post. In 1989 he had reached the maximum pay scale allowed to Beldar which was Rs. 750-940. Thus, w.e.f 01.04.1991 he was allowed in SITU promotion in the pay scale of Rs. 800-1150. He also passed the trade test for the post of Assistant plumber in 1991. The Govt. of India pursuant to the recommendation of 5th Pay commission introduced the ACP scheme w.e.f 9.08.1999. Pursuant thereto, the claimant was allowed 1st ACP in the scale of 3050-4590 on completion of 12 years and the 2nd ACP in the pay scale of 4000-6000 on completion of 24 years from the date of initial appointment. This ACP was allowed w.e.f 9.08.1999. While the matter stood thus, suddenly by the order dated 26.08.2009 the mgt withdrew the 2nd ACP granted to the claimant and made recovery of the entire amount paid. Before doing so, no notice was served nor any opportunity was granted to the claimant to explain the circumstances. Being aggrieved he raised a dispute through the union before the Labour Commissioner and on failure of conciliation the appropriate government referred the matter for adjudication on the point if the order of the mgt withdrawing the 2nd ACP is legal and justified. The claimant has further stated that the mgt had withdrawn the 2nd ACP and recovered the benefit granted on the ground that the claimant has not passed the qualifying 2nd trade test for grant of 2nd ACP. In this regard the claimant had stated that he was initially appointed as a Beldar and promoted to the category of Asst. Plumber in the year 1991. And for such promotion he had passed the trade test of Asst. Plumber conducted by the department in Nov., 1991. As per the order of director general of works, CPWD dated 7.5.1997 the Assit. Categories of CPWD workmen merged with the main category and classified as skilled artisan and the incumbents were granted higher pay scale notionally w.e.f 01.01.1973 and arrear was paid w.e.f 01.04.1981. Thus , the Asst. category of CPWD workmen stood abolished w.e.f 1.1.1973 and the promotional scale for unskilled category automatically got converted to the scale of skilled category instead of semi-skilled category. For such conversion no 2nd trade test was

required to be passed by the employee. But the mgt in an arbitrary action withdrew the 2nd ACP granted to him on the pretext that he has not passed the 2nd trade test. This action of the mgt is illegal and the claimant is entitled to relief of a 2nd ACP withdrawn from him. He has also prayed for grant of 3rd MACP w.e.f 01.09.2008.

The mgt appeared and filed written statement denying the stand taken by the workman. The contention raised by the mgt is that the proceeding is not maintainable since there exists no industrial dispute between the parties. The other contention of the mgt is that the claimant was initially appointed as a Beldar in the pay scale of unskilled category. He was conformed as Beldar as 01.04.1997 and was allowed the revision of pay as and when applicable. He attained his maximum scale for the post of Beldar and thus after stagnation was granted in SITU promotion w.e. f 01.04.1991 in the pay scale of 800-1150. Some anomalies arose with regard to grant of In SITU promotion and ACP at the same time. Thus, the CPWD directorate vide letter dated 26.09.2008 clarified that In SITU promotion to unskilled labour is admissible in the pay scale of Rs. 800-950 . It was further clarified that In SITU promotion would be admissible only upto 08.08.1999 i.e the date immediately before the ACP scheme came into force. In Nov. 1991 the claimant qualified the trade test for Asst. Plumber and was granted 1st ACP. For the merger of Asst. Category with the main category he was declared plumber on 30.1.2001. The claimant was granted 1st and 2nd ACP on completion of regular service of 12 years and 24 year resp. and was placed in the pay scale of 3050-4590 and 4000-6000 respectively. This was done by the order dated 06.7.2007. Consequent upon the implementation of 6th pay commission he was placed in the pay scale of 5200-20200 w.e.f 01.01.2006 as per the option given by him. At that point of time the pay scale of 1st and 2nd ACP granted to various employees was reviewed and it was noticed that the claimant of this proceeding is not entitled to 2nd ACP in the scale of 4000-6000 on account of not qualifying the 2nd Trade test, Accordingly, the pay scale granted to him as 2nd ACP was withdrawn and the amount paid was recovered. The management has further stated that this recovery was made in view of the clarification issued by the CWPD directorate in the letter dated 20.02.2007. Thus, the management had pleaded the withdrawal of 2nd ACP is legal and justified and cannot be called in question.

On these rival pleading following issue have been framed:

1. Whether the action of the mgt CPWD , Dehradun, in withdrawing financial benefits of ACP to the workman, Shri Puran Chand on account of non-passing of trade test is legal and justified? If so its effect?
2. Whether the relationship of employee and employer exists between the mgt and the claimant if so its effect?
3. To what relief the workman is entitled to?"

The claimant Puran Chand Testified as WW1 and filed the documents and marked as Exh. WW1/1 to WW1/5. But he could not be cross examined as he died and his legal heirs were substituted. The A/R for the claimant testified as WW2 and proved all the documents earlier exht. as WW2/1 to WW2/7. One Prashant Singh the Executive Engineer testified as MW1 on behalf of the mgt and he also filed a no. of documents marked as MW1/1 to MW1/20. The witnesses was cross examined at length by the A/R for the claimant.

FINDINGS

Issue No. 2.

No dispute has been raised by the parties with regard to the employer and employee relationship and thus this issue was not pressed.

Issue No. 1.

Admitted facts are that the workman was initially appointed as a Beldar and he was made permanent in the post of Beldar on 01.04.1997. It is also not disputed that he was granted In SITU promotion w.e.f 01.04.1991 in the pay scale of 800-1150 and the actual order was passed on 18.11.1997. The said order has been filed as Exht. WW2/1. It is also not disputed that the In SITU promotion was allowed upto the time just before the introduction of ACP. The other admitted fact is that the workman had reached the maximum scale of unskilled category in the year 1990. By filing the order of the CPWD dated 7.05.1997 marked as WW2/6, the claimant has stated that the Govt. took a decision for merging Asst. category of the work charged, employees with the corresponding main category and reclassifying them as skilled workman. Thus, after such merger, all the promotions applicable to the skilled workman automatically became applicable to the semi skilled persons reclassified as skilled workers. The said order since directed that after the merger the pay scale of each worker in pre revised scale will be fixed term 01.01.1973 or on the date of merger whichever is later, the pay scale of the claimant was

accordingly revised. There was no anomaly in the said pay fixation. But the mgt acted arbitrarily in withdrawing the pay scale granted to the claimant as the 2nd ACP on completion of 24 year of service. During arguments the Ld. A/R for the claimant argued that the In SITU promotion was the time bound scale granted in the next higher catre. The 1st and 2nd ACP was correctly allowed on implementation of 5th pay commission, considering the fact that during the 1st 12 and 24 years of service the claimant had not got any promotion. The grant of ACP was to compensate and give financial up-gradation to the persons who were not granted promotion during this period. The claimant was reclassified as Plumber from Asst. Plumber and the same was not at all a promotion. The mgt sought clarification from the directorate of CPWD about the eligibility of 2nd ACP in respect of the persons whose posts were reclassified from semi-skilled category to skilled category after the merger. In the said clarification which has been filed by the mgt as MW1/5, it is only contained that for grant of 2nd ACP, the incumbent shall be required to pass the 2nd trade test required for the post of promotion to Plumber/ Mason /carpenter etc. But the same is not applicable to the claimant since, he was not promoted to the post of plumber but his post was reclassified from Asst. Plumber to plumber.

This argument of the Ld. A/R for the claimant sound convincing since in the clarification dated 20.02.2007 marked as MW1/5, in clause 3, it has been clarified that the Beldars are entitled for financial up gradation under ACP Scheme. The 1st ACP in the scale of Rs. 3050-4590 shall be paid on passing of trade test required for promotion from Beldar to plumber. It has also been stated that the 2nd ACP in the scale of work Asst. i.e in the scale of 4000-6000 shall be granted to him and the trade test required to be passed is the same as required for promotion from Plumber / Mason / Carpenter et. This clarification order nowhere prescribes that for grant of 2nd ACP a 2nd Trade test is required to be passed by the employee who has not been promoted to the post of plumber, but his post was upgraded for the merger.

The contention of the mgt that for not qualifying the trade test the workman is not entitled to 2nd ACP is found not based upon record though the witness examined on behalf of the mgt stated that for grant of 1st and 2nd ACP the workman had to qualify two skill tests and the claimant since could not qualify the 2nd skill test, the 2nd ACP was rightly withdrawn. This statement of witness stands contrary to the documents filed by the mgt. The documents filed clearly show that there was no requirement for the 2nd skill test for grant of 2nd ACP to persons

whose posts were upgraded. Thus, it is held that the decision of the mgt for withdrawing the 2nd ACP granted to the claimant is illegal. This issue is accordingly answered in favour of the claimant.

ISSUE NO. 3.

In view of the finding arrived while deciding the issue no. 2 it is held that the claimant is entitled to the 2nd ACP from the date the same was allowed to him and the amount recovered shall be refunded to him. Not only that his pay shall be refixed from the date of withdrawal taking into consideration the 2nd ACP withdrawn and his salary and all other retiral benefit shall be calculated accordingly. Hence ordered

ORDER

The claim be and the same is answered in favour of the workman. It is directed that the mgt shall re-fix the salary of the workman on the date of withdrawal of 2nd ACP after applying the same to his pay scale and accordingly grant him pay for the remaining years of his service and the retiral benefits . The amount recovered from the claimant shall be refunded to the LRs of the claimant within 2 months from the date of publication of award with a minimal interest of 4 % p.a , failing which the amount shall carry interest @ of 6 % from the date of withdrawal and till the final payment is made. The mgt is further directed to work out the pay fixation and retiral benefits to the claimant within 3 months from the date of publication of the award.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
7th February, 2023.

Presiding Officer.
CGIT-cum-Labour Court.
7th February, 2023.

