

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. 30/2015**

**Date of Passing Award- 03<sup>rd</sup> March,2022.**

Between:

Shri Chander Bhan & Others, Beldar,  
C/o All India CPWD (MRM) Karamchari Sangathan  
H.NO. 4823, Gali No.13,  
Balbir Nagar Ext., Shahdra,  
New Delhi-112232.

Workmen

Versus

The Executive Engineer,  
CPWD, Ghaziabad Central Electrical Division,  
Hindon Airfield,  
Ghaziabad (U.P)201004.

Management

Appearances:-

Shri Satish Sharma  
(A/R)

For the Workman.

Shri Atul Bhardwaj  
(A/R)

For the Management

**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 CPWD, Dehradun Central Civil Electrical Division-I 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- 42011/01/2015 (IR(DU) dated 17/02/20152018 to this tribunal for adjudication to the following effect.

“Whether the workmen are entitled for grant of promotion w.e.f. Feb 1995, while the mistake in their promotion is already admitted and specific order to that effect is required? And if so, whether their services should be regularized and what should be the shortest specific time period for issuance of such immediate order and payment of accrued benefit there upon that he is entitled to?”

Being noticed the claimants as well as the management, CPWD appeared and filed their respective pleadings.

As per the narratives in the claim statement, the claimants had joined the service of CPWD as Beldars on different dates as mentioned against their names in the list appended to the claim statement. Their initial appointment was in the unskilled category. Since the workmen reached the maximum of the pay scale in that unskilled category, the management w.e.f. 1.4.91, gave them in situ promotion raising their pay scale 800-1150/- which was the semi skilled or assistant category of workers. But the CPWD, pursuant to the circular of DOPT, merged the semiskilled category with the main category w.e.f. 01.01.73 and re designated the same as skilled artisan. As a result thereof, the claimants were granted the higher pay scale of skilled artisan w.e.f. 01.01.73 and paid arrear of the said scale too. Being in the pay scale of skilled artisan since 01.01.73, they were entitled to the in-situ promotion in that cadre and higher pay scale under ACP Scheme w.e.f. 9.8.99 as directed in the office memorandum dated 8.8.2006 issued by DGW, CPWD. (ANNEXTURE IV). But the management instead of granting ACP, after giving the claimants in-situ promotion in the category of skilled artisan, on 23.8.2005 withdrew the in situ promotion granted to them w.e.f. 1.4.91, raising their pay to Rs. 800—1150/-. This order dated 23.8.2005 (Annexure III) was issued illegally and arbitrarily without giving any prior intimation to the claimants. Though in the letter dated 23.8.2005, there was a clear direction for granting pay protection to the beneficiaries there under, the management not only withdrew the in situ promotion granted w.e.f. 1.4.91, but also recovered the financial benefits granted to the claimants while granting ACP to them w.e.f. 9.8.99.

Being aggrieved the claimants raised a demand before the management through the union. But the dispute could not be resolved and the Union raised dispute before the Labour commissioner. Attempt was made for conciliation. That too failed and the appropriate Government referred the matter for adjudication in terms of the reference. It has also been stated that all the claimants have retired from service and few of them also died during the pendency of the proceeding and their legal heirs have been substituted. The illegal decision of the management has substantially influenced the retirement dues of the claimants. Hence in this proceeding they have prayed for a direction to the Management to grant pay scale of Rs 950-1500 w.e.f. 1.4.91 and consequentially for revision in ACP, already granted to them. A prayer has also been made for a direction to the management for revision of their terminal benefits and refund of the recovered amount within a stipulated time period.

The Management filed written statement refuting the stand taken by the claimants. While challenging the maintainability of the proceeding, it has been stated that there exists no Industrial Dispute between the parties. While denying the stand of the claimants that

assistant or semi skilled category was abolished w.e.f. 7.5.97, the management has stated that the assistant or semiskilled category merged with the skilled category w.e.f. 7.5.97 and renamed as skilled artisans. The claimants were working as beldar and never promoted to semiskilled category prior to 7.5.97. In view of the DG, CPWD, Office memorandum No 28/06/1997-EC dated 18.11.97. The unskilled workers of CPWD are to be granted in situ promotion with pay scale of Rs800-1150. Hence the order dated 7.5.97 is not applicable to the claimants of this proceeding. The claimants were granted ACP according to their eligibility and at that time pay protection was allowed to them. With such stand the Respondent has pleaded that the claimants are not entitled to the relief sought for.

The claimant filed replication to the stand taken by the Respondent.

On these rival pleadings the following issues were framed for adjudication.

### **ISSUES**

- 1- Whether the workmen are entitled for grant of promotion w.e.f. Feb 1995, when the mistake in promotion is already admitted and specific order to that effect is required? If so it's effect?
- 2- And if so, what should be the shortest specific time period for issuance of such immediate order and payment of accrued benefit thereupon
- 3- To what relief the workmen are entitled to and from which date and direction to management if any.

During the course of hearing the claimants examined these the claimants have lves as ww1 to ww3 and proved the documents marked in a series of ww1/1 to ww1/5. On behalf of the management one of it's Executive Engineer testified as MW 1 and proved the documents marked as Ext MW 1/1 to MW 1/4. The documents filed and relied upon by the claimants are the office memorandum of DG CPWD dated 07.05.97 on the basis of which the cadre of Assistant or semi skilled had merged with the skill category, the office order regarding a revision of pay scale granted to beldars (unskilled category) on their in-situ promotion in CPWD, the subsequent letters of the management withdrawing the in-situ promotion already granted for grant and implementation of ACP. The claimants have also filed the order of the management wherein guidelines were issue for grant of ACP to the persons to whom in-situ promotion was due prior to 09.08.1999 but could not be allowed due to administrative reason and the benefit of in-situ promotion can be allowed but upto 08.08.1999. Similarly the management besides examined its Executive Engineer also proved the documents which are the office memorandum dated 08.08.2006 containing guidelines for grant of in-situ promotion viza-viz ACP, the order of the management in which the in-situ promotion granted by order dated 10.02.2003 was withdrawn and the money paid would be recovered though a pay protection was granted for fixation of the pay on giving the benefit of ACP. The management witness has

also proved the order of the management dated 23.08.2005 in which in-situ promotion was originally granted.

## FINDINGS

### ISSUE NO.1

Admitted facts are that the claimants were initially appointed as Beldars and it is not disputed that they were granted in-situ promotion w.e.f. 01.04.1991 in the pay scale of 800-1150/- and the actual order was passed on 14.03.1996. It is also not disputed that the in-situ promotion was allowed upto the time just before introduction of ACP on 09.08.1999. The other admitted facts is that the workman had reached the maximum scale of unskilled category i.e. 750-950/-. By filling the order of CPWD dated 07.05.1997 marked as exhibit WW1/1 the workman have stated that the government took a decision for merging assistant categories of work charged employees of CPWD 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 workman. The said order since directed that after the merger the pay scale of each worker in pre-revised scale will be fixed on 01.01.73 or on the date of merger whichever is later and again on 01.01.86 in the new scale as per the fourth pay commission, accordingly the pay scale of claimant was revised. There was no anomaly in the said pay fixation but the management acted arbitrarily in withdrawing the in-situ promotional pay scale allowed to them.

The other contention raised by the workmen is that on account of in-situ promotion they were never promoted to the next higher rank and the ACP was correctly allowed to them. To support the stand they have relied upon the judgment passed by the **Hon'ble High Court of Punjab and Haryana in the case of Union of India and others vs. Raj Pal and others decided in CWP No. 19387 of 2011**. It is also the contention of the workmen that the said judgment of the Hon'ble High Court was followed by the Hon'ble CAT Principal Bench Delhi and upheld by the Hon'ble Supreme Court in SLP NO. 7467 of 2013.

The witness examined on behalf of the management while admitted about the circular of the DOPT regarding the grant of ACP stated that the department had issued an order for grant of the pay scale of 850-1150/- to unskilled workers w.e.f 01.04.1991. There is no dispute that the cadre of semi skilled workers merged with the skilled workers w.e.f 01.01.73 as per the arbitration award of 1988. This was the award passed prior to the order of the DOPT dated 13.9.1991 directing grant of in-situ promotion w.e.f. 01.01.73. Thus, the department found that the order of the management for grant of in-situ promotion to these workmen and others in the scale of 850-1150/- was not proper and hence, passed order for withdrawal of the same and recovery of the amount already paid. The witness of the management during cross –examination had admitted that before grant of ACP

another order vide exhibit WW1/2 dated 23.08.2005 was passed giving clear direction that pay protection will be allowed to the persons from whom in-situ promotion benefits shall be withdrawn and ACP will be granted. Not only that the witness who is an Executive Engineer during cross-examination failed to say if the financial benefit granted to the workmen for the said in-situ promotion and for the recovery made has impacted their entitlements for the period 1999-2008 though the ACP came into force w.e.f 09.08.1999. Thus, from the oral evidence of the management witness coupled with the document marked as WW1/3 and MW1/1 it is evidently clear that by order of the DOPT dated 13.09.1991 the Assistant Category merged with the skilled category. Before that the claimants were granted in-situ promotion in the cadre of Beldars raising their pay to 850-1150/-. After the merger stated above they were entitled to in-situ promotion in the cadre of skilled workers. During this intervening period ACP came to force w.e.f 09.08.1999. The claimants were entitled to in-situ promotion w.e.f 01.04.1991 in the cadre of skilled workers and their ACP should have been accordingly determined. Thus, it is held that the decision of the management in withdrawing the in-situ promotional scale, recovering the amount paid and revising the ACP granted to them is illegal. This issue is accordingly answered.

### **ISSUE NO.2 and 3**

In view of the finding arrived while deciding the issue no.1 it is held that the workmen are entitled to the promotional scale of 950-1500/- w.e.f 01.04.1991 under in-situ promotion in skilled category and the same shall be taken into consideration for re-fixation of their first ACP as consequence thereof. Hence, ordered.

### **ORDER**

The claim be and the same is answered in favour of the workmen. It is directed that the management shall re-fix the salary of the workmen in the pay scale of 950-1500/- w.e.f 01.04.1991 in, in-situ promotion. In view of this direction the ACP to be allowed to the workmen shall be accordingly revised. The pay on such fixation and the differential arrear alongwith the amount recovered shall be paid to the workmen by the management within 3 months from the date when this award would become enforceable failing which the amount accrued shall carry interest @12% per annum from the date when the amount is payable and till the final payment is made and the claimants would be at liberty of getting the order executed through process of law. Since, some of the claimants have died during the pendency of this proceeding, the amount shall be paid to the legal heirs of the said claimant as per the list appended to this order. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

SI N	Name	Father's Name	Designation	Date of Appointment/	Date of Retirement
---------	------	---------------	-------------	-------------------------	-----------------------

				Promotion	
1.	Late Chander Bhan (Legal Heir) Mrs. Sheela	Bhoop Singh	Beldar/Mason	21.07.66 /27.09.03	28.02.06
2.	Ashe	Khachedu	Beldar/fitter	30.06.66 /27.09.03	30.06.06
3	Jai Karan	RamChander	Beldar	06.05.67	31.10.06
4	LateRumal Singh (Legal Heir) Mrs. Nattho	Pushan	Beldar	06.05.67	30.04.07
5	Late Shri Tilak Ram (Legal Heirs) Mrs. Chandrawati	Jagram	Beldar	04.05.67	28.02.05
6	Bhup singh	Dal Singh	Beldar	20.07.66	31.07.05

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.  
CGIT-Cum-Labour Court.  
03<sup>rd</sup> March, 2022

Presiding Officer.  
CGIT-cum-Labour Court.  
03<sup>rd</sup> March, 2022