

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. 60/2014

Date of Passing Award- 21st January, 2022.

Between:

Shri Prem Shankar Saxena,
All India CPWD (MRM) Karmachari Sangathan,
H. No. 4823, Gali No. 13,
Balbir Nagar Extn., Shahadra,
New Delhi- 110032.

Workman

Versus

The Executive Engineer (Electrical),
CPWD, Dehradun Central Electrical Division,
20, Subhash Road,
Dehradun- 248001.

Management

Appearances:-

Shri Satish Kumar Sharma,
(Advocate)
Shri Atul Bhardwaj,
(Advocate)

For the Workman

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, Nirman Bhawan, 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- 42011/45/2013 (IR(DU) dated 05.08.2014 to this tribunal for adjudication to the following effect.

“Whether the action of management of CPWD in not paying due arrear of wages to the workman Shri Prem Shankar Saxena, retired wireman, is unjustified? If so, to what relief the workman is entitled to?”

As stated in the claim petition the claimant Prem Shankar was initially appointed as Assistant Wireman under the Workcharge establishment of the management w.e.f 02.02.72. He was issued charge sheet on 06.11.1991 followed by a departmental inquiry which continued upto the year 2001. The management without concluding the inquiry suddenly stopped the same. Being aggrieved the claimant had filed OA No.156/2001 before the Hon’ble

CAT Circuit Bench Nainital. That application was allowed and the Hon'ble CAT directed the management to conclude the inquiry within a period of 4 months from the date of communication of the order. Though the order was duly communicated the management did not complete the proceeding in time and the inquiry officer submitted his report on 13.07.2001. Thereafter the disciplinary authority passed the order on 08.11.2001 retiring the applicant compulsorily from service. Challenging the order the claimant filed a writ petition before the Hon'ble High Court of Uttarakhand at Nainital which was transferred to Central Administrative Tribunal Circuit Bench at Nainital. The Hon'ble Circuit Bench of the CAT disposed of the writ petition by order dated 26.04.2010 granting liberty to the claimant for filing of departmental appeal. Accordingly the claimant filed the appeal which was rejected by order dated 01.12.2010. Again the claimant filed OA No. 536 of 2011 before the Hon'ble Circuit Bench of the CAT at Nainital. The said OA was allowed and the order passed by the disciplinary authority dated 08.11.2001 and the appellate authority dated 01.12.2010 were quashed and set aside. The Hon'ble CAT further directed that the claimant applicant shall be deemed to be in service till the date of his superannuation i.e. till 31.07.2009 and shall be entitled for all the consequential benefits as if the order pass by the disciplinary authority have never been passed. It is also directed that the entire exercise shall be completed within a period of 2 months from the date of the receipt of the order. In accordance to the direction the claimant is entitled to receive his salary and allowances for the period 08.11.2001 i.e. the date of compulsory retirement to 31.07.2009 the date of his superannuation. The Hon'ble Circuit Bench of the CAT though communicated the management gave the least importance to the same. On the contrary as per the order dated 09.06.2011 of the Director General of CPWD for implementation of the arbitration award 1988, the management granted selection grade to the workman after completion of 8 years of regular service in skilled category w.e.f 01.01.81 and the workman was paid arrear of the same so far as the basic salary is concerned. The arrear of the allowances were not included in the arrear pay so far as HCA, OTA and benefit of merger pay are concerned. Not only that the workman is also entitled for benefit of 2nd ACP w.e.f 09.08.1999 on completion of 24 years of service and 3rd MACP w.e.f 01.09.2008 after completion of 28 years of service as per the order of the appropriate government. But the claimant was denied the same benefit though his counter parts have been paid the same. Being aggrieved the claimant had raised a dispute before the conciliation officer and the conciliation since failed the appropriate government referred the matter for adjudication.

The management filed WS denying the claim of the claimant. It has been specifically stated that there exists no industrial dispute between the claimant and the management. It has also been stated that the date of birth of the claimant being 07.07.1949 his superannuation age was calculated to be 31.07.2009. For indiscipline behaviour of the claimant he was rightly proceeded with in a domestic inquiry and the punishment was imposed

following the procedure strictly. However, the claimant challenged the order of the disciplinary authority and the appellate authority before the Hon'ble Circuit Bench of the CAT at Nainital and by order dated 14.07.2014 the Hon'ble CAT pass an order quashing the orders of the disciplinary authority and the appellate authority. It was directed that the applicant shall be deemed to be in service till the date of his superannuation i.e. 31.07.2007 and shall be entitled for all consequential benefits which shall be paid within a period of 2 months from the date of communication of the order. The said order of the Hon'ble CAT has been challenged by the management by filing a writ petition before the Hon'ble High Court of Uttrakhand at Nainital which is still pending. Hence the claim of the claimant for grant of all consequential benefits is not maintainable. It has been further stated that the selection grade as admissible has been allowed to the claimant and the arrears have been paid. His claim for arrear of the allowances is not maintainable. So far as the claim for MACP is concerned, the claimant is not entitled to the same as the 3rd MACP false due w.e.f 01.09.2008 and the claimant was retired on 10.11.2001. That intervening period being still under dispute the claim is not maintainable.

The claimant filed rejoinder denying the stand taken by the management. However, it has admitted about the pendency of the writ petition in the High Court of Uttrakhand challenging the order dated 14.07.2014 passed by the Hon'ble CAT.

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

ISSUES

1. Whether the action of the management CPWD in not paying the due arrear of wage to the workman is justified? if so its effect?
2. To what relief the workman is entitled to and from which date.

The claimant examined himself as WW1 and filed the documents marked in a series of WW1/1 to WW1/4. These documents include the order of the Hon'ble CAT dated 14.07.2014. The due and drawn statement prepared by the claimant and submitted to the management and the forwarding letter communicating the judgment of the Hon'ble CAT. Similarly the management examined its executive engineer as MW1 who proved the documents marked as MW1/1 to MW1/6. These documents include the inquiry report made against the claimant and the copy of the gazette notification of the department order allowing grant of super time scale to the regular employees completing 8 years in regular service.

At the outset of the argument the Ld. A/R for the management submitted that the order of the Hon'ble CAT being pending before the Hon'ble High Court the same cannot be implemented as claimed by the workman. However, he has been granted super time scale as per his entitlement and the arrears of the same has also been paid. Not only that the

claimant is not entitled to 3rd MACP in the year 2008 since, he was compulsorily retired from service w.e.f 10.11.2001. Unless the writ petition filed before the Hon'ble High Court of Uttarakhand is disposed of it cannot be said what is the date of his retirement. In such a situation hypothetically he cannot be allowed MACP w.e.f 01.09.2008. He emphatically argued that pending disposal WPC NO. 432/2014 now pending before the Hon'ble High Court of Uttarakhand the claim is not maintainable. In his counter argument the LD. A/R for the claimant admitted about the pendency of WPC No. 432/2014. But he insisted that the claimant is entitled to the arrear of the allowances payable to him on grant of super time scale. He also claimed that 2nd and 3rd MACP including its arrear are also payable.

FINDING

ISSUE NO.1

The claimant during his examination as WW1 has stated that he was an active member of the union and for that reason some false allegations were leveled and false charge sheet was issued. The departmental inquiry was conducted in a whimsical manner. Since the Hon'ble CAT has set aside the order of the disciplinary authority he is deemed to have been in service w.e.f 08.11.2001 to 31.07.2009 i.e. the intervening period between the date of compulsory retirement and superannuation. He has also stated that for implementation of arbitration award of 1988 though he was granted selection grade in skilled category w.e.f 01.01.81 and have been paid arrear, the arrear of allowances were not included. Thus, from the evidence of the claimant it appears that his claim is in respect of the arrear of the allowances in selection grade pay and the arrear of the salary and other consequential benefits for his reinstatement into service. The witness for the management examined as MW1 has admitted during cross examination that the salary of the workman was revised w.e.f 01.01.73 and again on 01.01.86 in the category of skilled workers and super time scale respectively. The witness has further admitted that the arrear of the pay in the super time scale though was paid, the arrear of the allowances were not paid since the respondent was not having the Gazette notification to that effect. He has also admitted that the Gazette notification since has been filed in this proceeding for payment of the arrear of the allowances steps can be taken now. Hence, in view of the said stand taken and since the evidence shows that the arrear of the allowances consequent upon the selection grade pay paid to the claimant was not granted, his entitled to the same. But for the pay and allowances including other consequential benefits for the intervening period between 08.11.2001 to 31.07.2009 cannot be allowed at this stage as WPC No. 432/2014 is still pending before the Hon'ble High Court of Uttarakhand wherein the order of the Hon'ble CAT passed in OA No. 536/2011 dated 14th July 2014 is under challenge. This issue is accordingly answered.

ISSUE NO.2

In view of the finding arrived in respect of issue no.1 it is held that the claimant is entitled to the arrear of the allowances only payable to him on account of grant of selection grade pay to him on 01.01.1981. Hence, ordered.

ORDER

The reference be and the same is answered affirmatively in part in favour of the claimant. He is held entitled to the arrear of the allowances only payable to him on account of grant of selection grade pay w.e.f 01.01.1981. The management is directed to calculate the same and pay to the claimant within 2 months from the date when this award would become executable. If the management would fail to comply the direction given in this award the amount accrued shall carry interest at the rate of 9% from the date of accrual of the arrear till the final payment is made. Copy be supplied to the parties and the record be consigned in the record room.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
21st January, 2022

Presiding Officer.
CGIT-cum-Labour Court.
21st January, 2022.