

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

Original Application No. 041/00218/2018

Date of Order: This, the 20<sup>th</sup> day of December 2019

**THE HON'BLE SMT. MANJULA DAS, MEMBER (J)**

**THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)**



1. Shri Hardewa Ram  
Son of Dhanna Ram  
Presently working as Superintendent  
Customs (Preventive Division)  
Agartala – 799003, Tripura.
2. Shri Sanjay Kumar  
Son of Ram Dayal Singh  
Presently working as Superintendent  
Customs (Preventive Division)  
Agartala – 799003, Tripura.

**.....Applicants**

By Advocates: Sri M. Chanda, Smt. U. Dutta & D. Neog

-Versus-

1. The Union of India  
Through the Secretary  
To the Government of India  
Ministry of Finance, Department of Revenue  
North Block, New Delhi – 110001.
2. Central Board of Indirect Taxes & Customs  
Represented by its Secretary  
Department of Revenue  
Ministry of Finance, North Block  
New Delhi – 110001.
3. The Chief Commissioner  
Goods and Services Tax & Customs  
N.E. Region, Crescens Building  
M.G. Road, Shillong – 793001, Meghalaya.

4. The Assistant Commissioner  
Office of the Chief Commissioner  
Goods and Services Tax & Customs, NER  
Crescens Building, M.G. Road  
Shillong – 793001, Meghalaya.

.....**Respondents**

By Advocate: Ms. G. Sutradhar for  
Sri R. Hazarika, Addl. CGSC

**Heard on: 07.11.2019**

**Pronounced on: 20.12.2019**



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### **ORDER**

#### **NEKKHOMANG NEHSIAL, MEMBER (A):-**

The case was heard on 07.11.2019 and reserved for orders. The parties were allowed to submit written argument. The counsel for the applicants submitted written argument on 28.11.2019. The learned counsel for the respondents submitted para wise comments on 11.12.2019.

2. The applicants are asking for the benefits of GPF under CCS (Pension) Rules, 1972 instead of New Pension Scheme, introduced w.e.f. 01.01.2004. The details of the relief sought are as under:-



"8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned letter dated 11.12.2017 and further be pleased to declare that the applicants are entitled to get the benefit of GPF under CCS (Pension) Rules, 1972 and the New Pension Scheme which was introduced w.e.f. 01.01.2004 is not applicable in the case of the applicants since they were recruited against the vacancy year/Recruitment year 2003.

8.2 That the respondents be directed to grant the benefit of Old Pension Scheme i.e. the benefit of GPF under CCS (Pension) Rules, 1972 which was in force till 31.12.2003, with all consequential benefits.

8.3 That the applicants pray permission to move this application jointly in a single application under Section 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987 as the reliefs sought for in this application by the applicants are common, therefore, pray for granting leave to approach the Tribunal by a common application.

8.4 Costs of the application.

8.5 Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper."

3. In the parawise comments, the respondents only pointed out that as per Office Memorandum under No. II(31)20/ET-II/2005 dated 12.07.2005, at para (v), the applicants have been particularly informed the terms and conditions of the appointment that on their appointment to service on or before 01.01.2004, they would be covered under the Defined Contribution Pension Scheme as per Department of Expenditure's O.M. No. 1(7)(2)/2003/TA/616 dated 29.12.2003.

4. The learned counsel for the applicants has cited three precedents of the judicial ruling in support of the case as under:-

- (i) **Ruling of Hon'ble Delhi High Court in W.P.(C) No. 3834/2013 in respect of Parma Nand Yadav & Ors. Vs. Union of India and Ors.**
- (ii) **Ruling of Central Administrative Tribunal, Ernakulam Bench in O.A. No. 180/00020/2015 in respect of Sheeba B. And another Vs. Union of India and Ors.**
- (iii) **Ruling of Hon'ble High Court of Uttarakhand in Special Appeal No. 330 of 2013 in respect of State of uttarakhand and Ors. Vs. Chandra Shekhar Singh and Ors.**



5. Accordingly, these three cases of judicial pronouncements are examined hereinafter one by one to see whether the case of the present applicants in this O.A. would fall into any of the same categories. The case of **Hon'ble Delhi High Court** in respect of **Parma Nand Yadav & Ors.**, has been that the applicants had appeared in the SSC Combined Graduate Level 2000. The examination was conducted in February 2000. After appearing in the Medical Board, they were declared medically unfit. This was indicated to them in January 2003 to appeal for review the Medical Board. In the review of the Medical Board, they have been declared fit and subsequently appointment letters were issued in April 2004. In the meantime, their colleagues who have

been through in the 1<sup>st</sup> Medical Board have joined and were given the benefits of CCS (Pension) Rules, 1972. The Hon'ble Delhi High Court after detailed examination, have come to the conclusion that the petitioners were deprived opportunity to join their batch on ground of delay in conducting Medical re-examination and hence they should be entitled to like their own colleagues the same benefits of old Pension Scheme which remained in force till December 2003.



6. The case of **Central Administrative Tribunal, Ernakulam Bench in respect of Sheeba B. and another** was that the vacancies for filling up of direct recruitment arose in the year of 2002. In spite of the clear vacancy available for direct recruitment quota, the respondent authorities conducted the examination only in 2004. Because of this, deliberate delay of filling up the vacancy for direct recruitment, the appointees through this direct recruitment were found to be at disadvantage vis-a-vis the promotees candidates or appointees. Therefore, the Co-ordinate Bench of CAT, Ernakulam Bench found that delay in conducting of examination and appointment of the applicants was

essentially due to the failure on the part of the department in holding the examination on time and the Govt. cannot be permitted to take advantage its own mistake. Therefore, the benefit of being covered by CCS (Pension) Rules 1972 was allowed to the applicants.



7. In case of order of **Hon'ble High Court of Uttarakhand in Special Appeal No. 330 of 2013 in respect of Chandra Shekhar Singh and Ors.**, the facts of the matter was that the applicants applied for the post of Assistant Teacher in Govt. Primary Schools and were interviewed on 28.09.2005. They were selected vide order dated 29.09.2005. Thereafter, the Government was issued an order dated 25.10.2005 making the order effective retrospectively w.e.f. 01.10.2005. Accordingly, the Hon'ble High Court of Uttarakhand has allowed the applicants to be entitled to regular pension as the order of the respondent authorities dated 25.10.2005 was made retrospectively resulting into denial the benefit of regular pension particularly more so, when they applied for the post, that benefit was available on that date.

8. In the case of the present applicants, the Staff Selection Commission (SSC in short) notified for

Combined Graduate Level (Preliminary) Examination-2003 which appeared in Employment News of week ending 25-31 January 2003 with indication of date of Preliminary Examination on 11.05.2003. The SSC declared the final result on 27.12.2004 for the main examination conducted from 26<sup>th</sup> to 28<sup>th</sup> September 2003. The respondent authorities issued appointment letter vide Office Memorandum No. II(31)20/ET-II/2005 dated 12.07.2005. Accordingly, the respondent authorities indicated in their appointment letter at para (v) that **'they will be covered by New Pension Scheme'**.



9. The issue is whether the respondent authorities have committed serious mistakes or delay in giving appointment to these applicants? It is observed from the records and documents submitted by the applicants that the preliminary examination conducted was in May 2003 and the SSC had declared the result towards the end of 2004. It means that the SSC took about 19 months (From May 2003 to December 2004). Thereafter, the respondent authorities issued appointment in July 2005 itself, which obviously was done after going through the process of character and

antecedent verification. It is observed that there is no any delay, deliberate or otherwise on the part of the respondent authorities to give appointment to the applicants. The result of the examination being conducted in May 2003 and result declared in May 2004. The respondent authorities obviously could not given any appointment before the results are declared and list of recommended candidates sent to them by the SSC. Therefore, it is amply clear that the case of the present applicants do not fall into any of the three categories of judicial orders, as cited by the learned counsel for the applicants.



10. In the context of the recruitment through examination conducted by either SSC or UPSC on All India Level basis, one has to understand and appreciate the manner in which the vacancies are being work out by the various departments/Ministries for intimation to the recruiting agencies. It has to go through calibrated detail exercise for arriving at how many vacancies are to be communicated to the SSC/UPSC. Generally the actual vacancies as on datethat is identified, persons under the process of



recruitment is deducted from that figure, if any, then the expected vacancies either due to promotion from that level of post or retirement are added, then finally the net figure is arrived at for the purpose of intimating the number of vacancies to the recruiting agency. When the actual results are declared, this figure of vacancies is re-examined once again and the number of required dossiers of candidates is demanded with category wise break up (GR, OBC, SC/ST) from SSC to process for verification and issuing of appointment letters. Sometimes, appointment letters issued earlier to candidates may not materialise either due to verification problems or the candidates choose not to join. As such, this is a complex process. It is practically not possible to determine which vacancies had arisen from which date to which the particular candidate is appointed. Therefore, demanding of certain service benefits from the date of perceived vacancy of the posts as notified by the recruiting agency will not be justified. Similarly, denying of certain service benefits on the basis of date of perceived vacancy to the appointed employees would be equally unjustified.

11. It is therefore, observed that the case of the present applicants is of the above situation that they have been appointed through the normal All India Level examination and no benefit can be claimed from the date of the notification of the examination by the SSC as if they have been appointed against the vacancies from that date of notification. At the same time, they do not fall in any one of the three categories for which judicial judgments have been cited. We, therefore, find that the present O.A. is devoid of merit and liable to be dismissed.



12. Accordingly, the O.A. is hereby dismissed. There shall be no order as to costs.

**(NEKKHOMANG NEIHSIAL)**  
**MEMBER (A)**

**(MANJULA DAS)**  
**MEMBER (J)**

**PB**