

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

O.A/350/1199/2020
M.A/350/628/2020

Date of Order: 16.12.2020

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member

**BIMAL KUMAR & Anr
VS
S.E . RAILWAY**

For The Applicant(s): Mr. A. Chakraborty, counsel
Ms. P. Mondal, counsel
For The Respondent(s): Ms. S. Choudhury, standing counsel



ORDER (O R A L)

Per: Ms. Bidisha Banerjee, Member (J):

Heard ld. counsel for the applicant. Affidavit of service is taken on record.

2. M.A for joint prosecution is allowed on payment of individual court fees.
3. The applicants, who joined service after 01.01.2004 and want to be governed by the old pension scheme, have preferred this O.A to seek the following reliefs:

"8.(a) Sub para (iii) of Para 7 of the office memorandum no. 57/04/2019-P & PW(D) issued by the Departmental of pension & PW, Government of India be modified to that extent that Government Servants who were selected against the vacancies pertaining to the period prior to 01.01.2004 will be eligible to exercise option to be covered under the CCS (Pension) Rules since right to received pensions upon superannuation as applicable at the time of notification of the post cannot later be altered to the prejudice of incumbents to the post after commencement of selection process.

(b) An order do issue directing the respondents to extend the benefit of old Pension Scheme to the applicants and to treat them as members of Railway Old Pension Rules.

(c) Pass an order directing the respondents to amend the office memorandum no. 57/04/2019-P&PW(B) issued by the Department of Pension & PW, Government of India and to allow the applicants to Switchover to Railway Pension Rules, 1962.

(d) Pass such further or other order or orders and other relief/s as may be deemed fit and proper in the peculiar facts & circumstances of the present case.

(e) Leave may be granted to file this Original Application jointly under Rule 4(5)(a) of the CAT procedure Rule 1987."

4. At the outset Ld. Counsel for the applicants would submit that the applicants are aggrieved as their representations to bring them under the old pension scheme has not yet been considered and would further submit that his clients would be fairly satisfied with a direction to the competent authority to consider their pending representations dated 11.08.2020 (annexure A-6 to the O.A) in the light of the decision of the Hon'ble High Court Delhi in WP (C) 2810/2016 Inspector Rajendra Singh & Ors vs UOI & Ors , and to dispose them of in a time bound manner.

5. In the said matter, supra, Inspector of BSF, who were recruited in terms of Employment News of 2002 and competitive examination on 12.01.03 (prior to 01.01.04), but asked to join after 01.01.04 (March 2005), They prayed for benefits of Old Pension Scheme. They were allowed to be governed by Old Pension Scheme. Relevant extracts of the judgment being as under:

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12. By reason of the delay in issuance of appointment letters, the petitioners were denied the benefit of the Old Pension Scheme under the Central Civil Services (Pension) Rules 1972.

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18. In our view, basic terms and conditions of service, such as the right to perceive pension upon superannuation, as applicable at the time of notification of the posts, cannot later be altered to the prejudice of the incumbents to the post, after commencement of the selection process.

19. One Parmanand and 24 others filed a writ petition being WP(C) No.3834/2013. The said writ petition was disposed of by a judgment and order dated 12.05.2015 of a Division Bench of this Court. Relying on an earlier judgment of this Court dated 26.05.2011 in WP(C) No. 5400/2010 (Avinash Singh Vs. Union of India and Others) and in WP(C) No. 327/2012 (Navin Kumar Jha Vs. Union of India and Others), the Division Bench allowed the writ petition and directed that the

petitioners, who had joined service after 01.01.2004 be given the benefit of the Old Pension Scheme.

20. In WP(C) No.3834/2013 (Parmanand Yadav and Others Vs. Union of India and others) the Division Bench held:-

"8. In the case of BSF, of which petitioners are enrolled members of the Force, letters offering appointment were delayed by three months, a fact admitted by the respondents, and as to be found in the DG BSF admitting said fact in the counter affidavit filed. 9. Thus, for parity of reasons, same relief as was granted to Naveen Kumar Jha and Avinash Singh must flow to the writ petitioners, and thus we adopt the reasoning in the two decisions, and hence we have reproduced the same hereinabove. 10. The petition is allowed issuing a mandamus to the respondents to treat the petitioners as a member of the pension scheme which was in vogue till December 31, 2003 and not to treat them as members of the new pension contributory fund scheme."

21. In Naveen Kumar Jha Vs. Union of India and Others decided on 02.11.2012, a Division Bench of this Court had held:

"15. On the subject of the petitioner being entitled to the old Pension Scheme, in similar circumstances, deciding WP(C) No.10028/2009 Amrendra Kumar vs. UOI & Ors., where the petitioner therein was also similarly deprived the opportunity to join with his batch on account of delay in conducting medical re-examination, the Court had directed that said writ petitioner would be entitled to the benefit of the old Pension Scheme which remained in force till December 31, 2003. 16. The petitioner would be entitled to similar benefit and accordingly the next mandamus issued is by way of a direction to the respondents to treat the petitioner as a member of the pension scheme which remained in vogue till December 31, 2003."

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23. The issue of whether Sub Inspectors similarly circumstanced, as the petitioners, who had been cleared in medical examinations in 2003, but issued with appointment letters and joined the BSF in 2004 or 2005, could be denied pensionary benefits under the old pension scheme, which ended on 21.12.2003, was decided by a Division Bench of this Court in WP(C) No.5830/2015 (Shoorvir Singh Negi Vs. Union of India and others) heard with five other writ petitions.

24. By a judgment and order dated 17.09.2015, the Division Bench held:-

"As far as the claim for pensionary benefits based upon the old pension scheme which ended on 31.12.2003 is concerned, we are of the opinion that a somewhat different result would have to follow. Undoubtedly, all the petitioners were declared medically fit by 2003. However, they would not be issued with appointment letters and joined subsequently in 2004 or 2005. It is here that the observations in Avinash Singh (supra) quoted with approval in Naveen Kumar Jha (supra) become relevant. Although the petitioners were declared fit earlier - at least much before the cessation of the old pension rules, there was an administrative delay in the issuance of the appointment letter asking them to join training. In these



circumstances, in the interests of justice, we hold that they should be entitled to the benefits of the old pension scheme."

25. In *Shoorvir Singh Negi (Supra)*, the petitioners had claimed seniority as also pensionary benefits under the Old Pension Scheme as per the CCS (Pension) Rules 1972. While the prayer to seniority over persons who joined earlier, was disallowed, but the claim of those petitioners for pensionary benefits under the Old Pension Scheme, as per CCS(Pension) Rules 1972, was allowed.

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29. The judgment dated 12.02.2015, in *Parmanand (supra)* has been completely misconstrued. The judgment was rendered in the case of persons to whom appointment letters had been issued before 31.12.2003. The judgement does not restrict application of the old scheme only to those to whom joining letters were issued in December 2003.

30. The respondents have contended that the final results of the petitioners had been declared by the Staff Selection Commission in November, 2004 long after the New Pension Scheme was given effect. If there was delay in declaration of the results and issuance of letters of appointment, the incumbents are not to suffer.

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39. It is well settled that relief under Article 226 of the Constitution of India is discretionary. When there is acquiescence and laches and delay in approaching this Court, discretionary relief might be declined. However, delay is no bar to entertaining a writ petition. If entertaining a delayed writ petition entails the consequence of unsettling things already settled, relief may be declined. However, flagrant discrimination cannot be allowed to continue, only because of delay. Illegality must be redressed. In this case grant of relief would not result in unsettling things already settled. We are not inclined to reject the writ petition on the ground of delay.

40. The writ petition is allowed. The respondent shall treat the petitioners as members of the Old Pension Scheme under the Central Civil Services (Pension) Rules 1972."

6. The respondents have issued orders in terms of the decisions.

7. The Department of Pension and PW Government of India has issued an Office Memorandum dated 17.02.2020 on coverage under Central Service (Pension) Rules 1972 in place of National pension System of those Central Government employees whose selection for appointment was finalized before 01.01.2004 but who joined in Government service on or after 01.01.2004, The



circular explicitly stipulates that option would be available to those Government servants who were declared successful for recruitment before 01.01.2004 against vacancies pertaining to the period prior to that date. The illustrative examples of such circular, dated 17.02.2020, being as under:

"(i) The result for recruitment was declared before 01.01.2004 but the offer of appointment and actual joining of the Government servant was delayed on account of police verification, medical examination etc.

(ii) Some of the candidates selected through a common selection process were issued offers of appointments and were also appointed before 01.01.2004 whereas the offers of appointment to other selected candidates were issued on or after 1.1.2004 due to administrative reasons/constraints including pending court/CAT cases.

(iii) Candidates selected before 01.01.2004 through a common competitive examination were allocated to different Departments/organization. While recruitment process was completed by some Department(s)/Organization on or before 31.12.2003 in respect of one or more candidates, the offers of appointment to the candidates allocated to the other Department/organization were issued on or after 01.01.2004.

(iv) Offers of appointment to selected candidates were made before 01.01.2004 with a direction to join on or after 01.01.2004.

(v) Offers of appointment were issued to selected candidates before 01.1.2204 any many/most candidates joined service before 01.01.2004. However, some candidates(s) were allowed extension of joining time and they joined service on or after 01.01.2004. However, their seniority was either unaffected or was depressed in the same batch or to a subsequent batch, the result for which subsequent batch was declared before 01.01.2004.

(iv) The result for recruitment was declared before 01.01.2004 but one or more candidates were declared disqualified on the grounds of medical fitness or verification of character and antecedents, caste or income certificates. Subsequently, on review, they were found fit for appointment and were issued offers of appointment on or after 01.01.2004.

It has been observed that in all the above illustrative cases, since the result for recruitment was declared before 01.01.2004, denial of the benefit of pension under CCS (Pension) Rules, 1972 to the affected Government servants is not considered justified."

8. In the present O.A pursuant to an advertisement issued by RRB

Bhuvaneswar in Employment News No. 2/2003 dated 08.11.2003, the

applicants applied for consideration of their candidature for appointment to

the post of Goods Guards/ASM/TA. Being declared eligible, they appeared in

the selection test, succeeded and were appointed in March 2005 in the post of

Goods Guard. They were brought under the New Pension System. The

advertisement for recruitment to the post of Good Guard/TA was made in the year of 2003 which did not mention that National Pension System will be applicable after recruitment.

9. The applicants have preferred representations to come under Old Pension Scheme, the said representations which are stated to be pending before the authorities. As such, I am of the considered opinion that no fruitful purpose would be served by calling for a reply in this matter unless the pending representations are decided by the competent authority.



10. Accordingly, I dispose of this O.A with a direction upon the competent authority to consider the representations of the applicants in the light of the decision supra and the DOPT OM, and decide the claim of the applicants in accordance with law within a period of 2 months from the date of receipt of copy of this order. In the event the applicants are found entitled to the relief as prayed for, an appropriate order in accordance with law be issued within the said period a speaking order be issued.

11. It is made clear that I have not entered into the merits of this matter and, therefore, all points are kept open for consideration

12. This OA accordingly stands disposed of. No costs.

(Bidisha Banerjee)
Member (J)