

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
KOLKATA.



OA. 350/1622/2017

Date of order: 16.12.2020

Present

:Hon'ble Ms. Bidisha Banerjee, Judicial Member

1. Avinandan Chatterjee,  
Son of Shri J. Chatterjee,  
Quarter No. T-1 (East) Palta Park,  
Nawabganj, Ishapore, Pin 743144,  
Presently having P. No. 809981, JWM  
(Junior Works Manager), Metal and Steel Factory,  
Ishapore, Pin : 743 144, West Bengal.
2. Biplab Das,  
Son of Shri J. K. Das, Flat No. F, 2<sup>nd</sup> Floor,  
South Block, Manmatha Bhawan,  
582 B.T. Marik Road, Post : Nawabganj,  
Ishapore, Pin : 743 144,  
Presently having P. No. 809987, JWM  
(Junior Works Manager), Metal and Steel Factory,  
Ishapore, Pin : 743 144, West Bengal.
3. Dipak Pal,  
Son of Shri Debesh Pal, 25 / 2,  
Kharpara, Kalitala Lane, (Beside W.B.S.E.B Power  
House) Post Office : Baidyabati, District : Hooghly,  
Pin 712 222, West Bengal,  
Presently having P. No. 809980, JWM  
(Junior Works Manager), Metal and Steel Factory,  
Ishapore, Pin : 743 144, West Bengal.

..... Applicants.

-Versus-

1. Union of India,  
Service though: Secretary,  
Department of Defence Production,  
Ministry of Defence,  
Government of India,  
136, South Block,  
New Delhi – 110101.
2. Secretary, Ordnance Factory Board,  
Ayudh Bhawan, 10-A, S.K. Bose Road,  
Kolkata – 700001.



3. General Manager,  
Metal and Steel Factory,  
Ishapore, 24 Parganas (North),  
Pin : 743 144, West Bengal.

.....Respondents.

For the Applicant : Mr. N. Roy, Counsel

For the Respondents : Ms. D. Nag, Counsel

ORDER (Oral)

Per Ms. Bidisha Banerjee, JM:

The applicants in this OA have sought for following reliefs:



- "8.(a) Leave may be granted under Rule 4 (5a) of the Central Administrative Tribunal (Procedure) Rules, 1987 permitting the Applicants herein to join together and file a single application having regard to the cause and the nature of relief prayed for that they have a common interest in the matter;
- (b) To declare that the Notification F. No. 5 / 7 / 2003-ECB & PR, issued by the Ministry of Finance (Department of Economic Affairs) (ECB & PR Division), vide Notification New Delhi, the 22<sup>nd</sup> December 2003 published in Gazette of India, Extraordinary Part I – Section I, is by executive fiat and seeks to override the statutory provisions of the Pension Act, 1871 since not being framed under the enactment and;
- (c) To hold and pass an order that the recruitment of the Applicants herein were to substantive posts that had arisen prior to 01.01.2004 lastly in the year 2003 and as a consequence thereof the Applicants were entitled to similar reliefs of coming within the purview of Central Civil Services (Pension) Rules, 1972 in consonance to the judicial pronouncement dated 15<sup>th</sup> day of February 2016 made by the Learned Central Administrative Tribunal, Ernakulam Bench, Ernakulam, in Original Application No. 180 / 00020 / 2015 [In re: Sheeba B & Another – Vs – Union of India & Others];
- (d) Costs;
- (e) Such further order or orders, direction/directions as this Learned Tribunal may deem fit and proper in accordance with law."

2. The case of the applicant in a nutshell is that the new pension scheme was introduced for employees recruited on or after 01.01.2004 vide notification dated 22.12.2003. The Ernakulam Bench of this Tribunal in OA. 180/20/2015 (Sheeba B & Another v. Union of India & Ors.) declared for its applicants that they are

deemed to have been appointed from the date the vacancy arose and if the vacancy arose prior to 01.01.04 they shall be included in the CCS (Pension) Rules, 1972. <sup>present B</sup> The applicants claim that the vacancies in question had fallen in the year of 2003 and a recruitment drive was made through an open advertisement published in the employment news in the year of 2003. However, the applicants had joined their respective posts after 01.01.2004. Their representations for seeking applicability of old pension scheme was rejected by an order dated 30.03.2017. Aggrieved they have preferred this OA.

3. Today, at hearing, Id. Counsel for applicant would submit that the issue has been settled in WP (C ) 2810/2016( **Inspector Rajendra Singh &Ors. v. Union of India &Ors.**) in the following manner:



"18. In our view, basic terms and conditions of service, such as the right to receive 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."  
(emphasis added)

4. Per contra, Id. Counsel for respondents would cite an OM, dated 17.02.2020, issued by the Department of Pension and PW in regard to coverage under CCS (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 government service on or after 01.01.2004.

Citing the circular, Id. Counsel for respondents would allege that the applicants have failed to show that their selection was finalized prior to 01.01.2004 and therefore they would not be governed by the old pension scheme.

5. I have heard Id. Counsel for both the parties. As the respondents have not considered the matter in the light of the OM, and the decision, and since the Department of Pension & PW Office Memorandum dated 17.02.2020 is in place, I

am of the considered opinion that the respondents should consider the claim of the applicants in the light of the OM as well as the decision cited supra and pass an appropriate order within a period of 4 months from the date of receipt of a copy of this order.

In the event applicants are found entitled to old pension scheme, they would be extended the appropriate benefits under the said scheme, within the said period.

6. OA is accordingly disposed of. No costs.

  
(Bidisha Banerjee)  
Member (J)

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