

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATAM.A/350/457/2020  
O.A/350/1748/2017  
M.A/350/141/2019

Date of Order: 02.12.2020

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

Abbas Ali Mondal, son of Late Amir Hosen Mondal, aged about 59 years, working as Sub-Post Master, Vivekananda Pally, Siliguri- 743006, residing at village+P.O Shulka Durgapur, Palta S.O., P.S – Gopal Nagar, Bangoan District-24 Parganas (North), Pin – 743701, presently residing at Abbas Ali Mondal, c/o Santosh Saha, 12, Upendra Kishore Sarani (behind Jyoti Medical), Rabindra Nagar, P.O. Rabindra Sarani, Siliguri – 734006.

--Applicant

-vs-

1. Union of India service through the Secretary, Ministry of Communication, Govt. of India, Department of Posts, Dak Bhavan, New Delhi – 110001.
2. The Chief Post Master General, West Bengal Circle, Yogayog Bhavan, C.R Avenue, Kolkata – 700012.
3. The Postmaster General, NB & Sikkim Region, Siliguri, Pin No. 734001.
4. The Superintendent of Post Offices, Darjeeling Division, Darjeeling – 734101.

--Respondents

For The Applicant(s): Mr. K. Sarkar, counsel

For The Respondent(s): Mr. A. K. Chattopadhyay, counsel

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

Heard ld. counsel for both parties.

2. The applicant, who joined service after 01.01.2004 and wants to be governed by the old pension scheme has preferred this O.A to seek the following reliefs:

"i. To issue direction upon the respondents and their men and agents to allow the applicant to draw his superannuation pension under old pension scheme.

ii) To issue further direction upon the respondents and their men and agents to declare that the applicant is deemed to have been appointed from the date of the vacancy arose and the applicant shall be included in



the CCS(Pension) Rule, 1972 and respondents are directed to collect necessary subscription under the Provident Fund Rules.

iii) To issue appropriate necessary direction upon the respondents that the contributions collected from the applicant's salary under the new pension scheme shall be credited to his General Provident Fund Account.

iv) To issue further direction upon the respondents and their men and agents to give him a benefit of the judgement in the case of Shinoy P.A vs-UI & Ors (O.A No. 180/00020/2015 dated 15.02.2006 in CAT, Ernakulam Bench) forthwith.

v) To pass any other order or orders as the Hon'ble Tribunal deem fit and proper."

3. At hearing, Id. counsel for the applicant would submit that the O.A may be disposed of in the light of the O.Ms dated 17.02.2020 and the O.M dated 25.06.2020 issued by the Department of Pension and Pensioners' Welfare whereby and whereunder it has been clarified that employees who joined after 01.01.2004 against vacancies declared before 1.1.2004 are eligible to opt for old pension in terms of O.M dated 17.02.2020, as extracted hereunder for clarity;

No. 57.04/2019-P&PW(B)  
Government of India  
Ministry of Personnel, Public Grievances and Pensions  
Department of Pension and Pensioners' Welfare

Lok Nayak Bhawan, Khan Market,  
New Delhi, the 25<sup>th</sup> June, 2020

#### OFFICE MEMORANDUM

**Subject: Coverage under Central Civil Services (Pension) Rules, 1972, in place of National Pension System in terms of DoPPW OM dated 17.02.2020 - clarifications- regarding.**

The undersigned is directed to say that instructions have been issued vide this Department's O.M. of even number dated 17<sup>th</sup> February, 2020, that in all cases where the results for recruitment were declared before 01.01.2004, against vacancies occurring on or before 31.12.2003, the candidates declared successful for recruitment shall be eligible for coverage under the Central Civil Services (Pension) Rules, 1972. Accordingly, such Government servants who were declared successful for recruitment in the results declared on or before 31.12.2003, against vacancies occurring before 01.01.2004 and are covered under the National Pension System on joining service on or after 01.01.2004, may be given a one-time option to be covered under the CCS(Pension) Rules, 1972.

2. References have been received in this Department seeking clarifications in regard to the implementation of the aforesaid instructions in certain circumstances. The issues raised by the various Departments have been examined in this Department and the position is clarified as under:

S. No.	Issue raised	Clarification
1	A Government servant joined in a Department /Office of the Central Government on or after 01.01.2004 on the basis of results declared before 01.01.2004 against vacancies occurred prior to 01.01.2004 and thereafter joined another Central Government Department / Office with proper permission after tendering technical resignation. Can the option exercised by such a Government servant be considered in accordance with the O.M. dated 17.2.2020 and, if so, which Department/office will take a decision on such option.	Such a Government servant is also eligible to exercise option under O.M. dated 17.02.2020. A decision on the option shall be taken by the appointing authority of the post in the Department/Office for which such option is exercised by Government servant. In case the Government servant has submitted his option in his latest Department/office, that Department/Office shall forward the option to the concerned Department/office, for taking an appropriate decision. The decision taken by the concerned Department/Office shall be communicated to his latest Department. In such cases, the instructions relating to mobility as contained in this Department's O.Ms. No. 28/30/2004-P&PW(H) dated 26.07.2005 and 28.10.2009 shall also be applicable and further action for counting of past service for pension/gratuity shall be taken in accordance with the CCS(Pension) Rules, 1972 by the latest Department/Office.



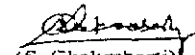
-2/-

2.	Can an option exercised by a member of the family of the deceased Government servant be considered.	If a Government servant, who was otherwise eligible to exercise option in terms of the O.M. dated 17.02.2020, has already died, the option exercised by the member of the family, who is eligible to receive NPS benefits on death of the Government servant in accordance with PFMDA (Exits and Withdrawals under NPS) Regulations, may be accepted and processed in accordance with the instructions contained in this Department's OM dated 17.02.2020.  If, before his death, the Government servant had joined another Central Government Department/Office with proper permission after tendering technical resignation, the option exercised by the such nominee shall be processed in accordance with the clarification No. (1) above.
3.	In cases covered by clarification No. (2), how will the amount of the corpus in the NPS account, which was transferred to the Government consequent on death of the Government servant in accordance with the O.M. No. 38/4/06-P&PW(A) dated 05.05.2009, be adjusted.	The amount of the corpus in the NPS account, which was transferred to the Government consequent on death of the Government servant, shall be adjusted in the manner indicated in para 2 of this Department's O.M. dated 17.02.2020, with the modification that the employee's contribution in the NPS account along with up-to-date interest, calculated on the rates applicable to CPF from time to time, shall be paid to the person in whose favour a nomination to receive NPS amount was submitted by the Government servant under the Regulations notified by PFMDA.
4.	Will the instructions contained in the OM dated 17.02.2020 be applicable in the case of Government servants who joined on or after 01.01.2004 on appointment on compassionate grounds. If so, how will the eligibility of such Government servants to exercise option under OM dated 17.02.2020 be determined.	A Government servant, who joined on or after 01.01.2004 on appointment on compassionate grounds, shall be eligible to exercise option in terms of the OM dated 17.02.2020, if the competent authority had taken the decision on the recommendation of the Screening/Selection Committee to appoint the Government servant on compassionate grounds before 01.01.2004.

-3/-

3. All Ministries / Departments are requested to bring the contents of these clarifications to the notice of Controller of Accounts/Pay and Accounts Officers, Attached office and Subordinate Offices under them.

4. Hindi version will follow.

  
(S. Chakrabarti)

Under Secretary to the Government of India

To,

1. All Central Govt. Ministries / Departments.
2. Department of Expenditure, Ministry of Finance, North Block, New Delhi.
3. C&AG, Bahadur Shah Zafar Marg, New Delhi.
4. Ministry of Railways, Railway Board, for information, New Delhi.
5. Department of Personnel and Training, North Block, New Delhi.
6. Department of Financial Services, Jeevan Deep Building, Parliament Street, New Delhi.
7. CGA, Department of Expenditure, INA, New Delhi.
8. AD(OL) for Hindi Version
9. NIC for posting on the website of this Department.

4. Ld. counsel for the applicant would canvass that the selection in question was of the year 2003, the vacancies arose/occured in 2002 and therefore the O.Ms referred supra, would squarely apply to the present facts and situation.

5. Ld. counsel for the respondents would raise no objection to the disposal of the O.A for consideration in the light of the O.Ms., supra.

6. Accordingly, with consent of parties we would dispose of the OA with a direction upon the Respondent No. 2 or any other competent authority to consider and decide the claim of the applicant in the light of the O.Ms referred supra with a reasoned and speaking order issued in accordance with law and within a period of 3 months from the date of receipt of copy of this order. We would further direct that in the event if nothing else stands in the way, appropriate benefits shall be granted to the applicant by issuing orders within 1 month thereafter.

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

8. The OA accordingly stands disposed of. M.As also stands disposed of.  
No costs.



(Nandita Chatterjee)  
Member (A)

(Bidisha Banerjee)  
Member (J)

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