

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Dated: This the 21st day of Aug 2009

ORIGINAL APPLICATION NO. 1110 OF 2006

HON'BLE MR. S.N. SHUKLA, MEMBER (A)

1. Uma Charan son of late Sri Shiv Charan, R/o Village Mahjudawa, Post Deoli, District Allahabad
... Applicants

By Adv: Shri D. K. Pandey

V E R S U S

1. Union of India through Secretary Ministry of Defence Army Headquarter South Block, New Delhi
2. The Office-In-Charge A. O. C. Records, office P.B_3, Trigumugherry, Sikandrabad.
3. Office of the P.C.D.A. Pension (C.C.) Lucknow Cantt.
4. Commandant C.O.D. Chheoki, Naini, Allahabad.

. . . Respondents

By Adv: Shri S. Srivastava

ORDER

This O.A. has been filed for seeking following relief/s:-

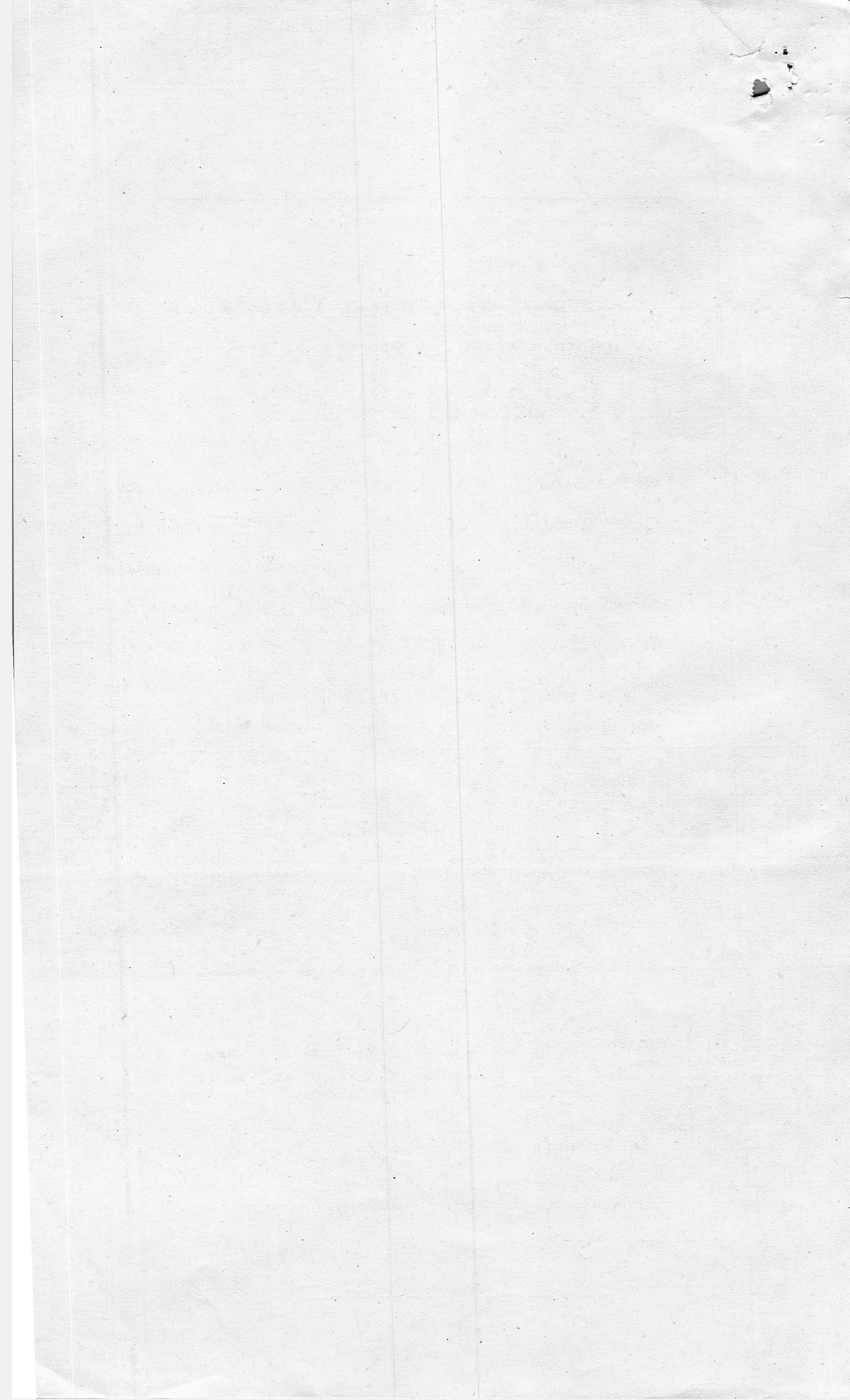
"1. In view of the facts mention in para _ 4 and ground in para 5, it is most respectfully prayed that the Hon'ble court may be please to direct the respondents to extend the benefit of old pension scheme to the applicant w.e.f. 27.9.1993.

or

to pass any order or direction which this Hon'ble Court deem fit and proper in the present circumstances of the case.

2. The factual matrix of the case is that through the notification dated 23.08.1984 respondent No. 4 invited application for a penal of seven persons (6 Unreserved and 1 reserved for Scheduled Candidate) for the post of Store Keeper in COD Chheoki, Allahabad. The applicant

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alongwith other candidates were sponsored by employment exchange.

3. In pursuance of the aforesaid notification several candidates were sponsored by the employment exchange as well as the department the applicant received a call letter for attending the selection after the selection penal was notified on 29th Sept. 1984 by respondent No. 4 consisting of 7 names the applicant being on Sl. No.7 (Annexure-A-5). Subsequently candidates at Sl. No. 2 and 3 namely Rama Shanker Yadav and R. C. Shukla were appointed in the year 1988. The remaining were kept in waiting. The applicant himself given a letter of selection dated 03.10.1984, (Annexure A-6). Thereafter, due to imposition of ban in recruitment and other candidates were kept in waiting including applicant. However, vide order dated 09.10.1993 (Annexure A-7) other candidates namely Shri Raj Narain, Shri Gulab Chandra and Deota Deen were appointed.

4. Significantly the person at Sl. No. 1 Shri Aley Yasin was not appointed out of six general candidates as such he filed O.A. No. 1384 of 1993 before this Tribunal and same was allowed vide order dated 15.12.2000 and said Shri Aley Yasin has been appointed as Store Keeper in the month of November 2001.

5. The applicant belonging to Scheduled Cast category was entitled for appointment against the reserved quota even before 6th candidates, however, his name was ignored while reserved quota was vacant. The applicant also approached this Tribunal and obtained the applicability certificate in O.A. No. 1536 of 2001 with

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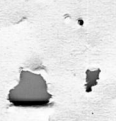
a direction to the Respondents to give appointment to the applicant on the post of Store Keeper w.e.f. the same date when others have been given appointment. He was, however entitled to the proforma fixation of pay from of pay from the retrospective date (Annexure-A-8).

6. In pursuance of the aforesaid order dated 03.04.2003 the respondent No. 2 issued appointment letter to the applicant on 08.03.2004 on the post of Store Keeper w.e.f. 27.09.1993 (Annexure A-9).

7. The applicant joined on the post of Store Keeper on 12.04.2004, and, thereafter made a representation before the respondent No. 2 in the month of November 2004 requesting for the applicability of CCS (Pension) Rules 1972 and for permitting of G.P.F. subscription on the ground that selection have been made w.e.f. 27.09.2003 at par with others who were party in the judgment and order dated 03.04.2003 of this Tribunal. Since those persons were getting benefit of CCS (Pension) Rules 1972, the applicant was also entitled for the same benefits irrespective of the facts that he had joined the service on a letter dated 12.04.2004.

8. In response to the aforesaid representation the respondent No. 2 sent a letter dated 29.12.2004 to the C.O.D. Chheoki regarding the applicability of CCS (Pension) Rules 1972 after examining the case and obtaining the opinion of the Audit authorities (Annexure-A-11). The respondent No. 3 issued a letter dated 27.07.2005 to the commandant C.C.D. Chheoki, Naini, Allahabad, for applicability of new pension scheme w.e.f.

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01.01.2004 and informed about Audit remarks that the case of applicant has been examined and the following remarks are offered:-

"i). Government of India have introduced a new defined contribution pension scheme replacing the existing system w.e.f. 1.1.2004 and applicable to all new entrants to Central Government Service joining on or after 1.1.2004

ii). Since the applicant (S.K.) selected from 27.9.93 on the order of court but was actually appointed and joined service on 12.4.2004 hence his case is covered under CCS (Pension) Rule 1972 and not permitted to subscribe G.P.F. under existing Rules.

iii). The recovery under new pension scheme may please be continued.

A copy of the letter dated 27.7.2005 issued by respondent No. 3 to the commandant C.O.D. Chheoki, has already annexed as Annexure No. A1 to this application."

9. In the Counter affidavit the stand taken by the authorities is supported in view of Government of India new Pension scheme vide notification No. 5/7/2003 – ECB & PR dated 22 Dec 2003 and F1 (7) (2)/2003/TA/19 dated 14th January 2004. It was also stated as under:-

"14. In the meantime Government of India introduced new pension scheme vide notification No. 5/7/2003 – ECB & PR dated 22 Dec 2003 and F1 (7) (2)/2003/TA/19 dated 14 January 2004, for Central Government Employees who joined /assumed their duties on or after 1st January 2004.

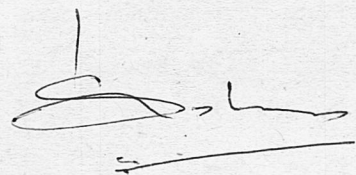
15. It is pertinent to mention here that the applicant joined/assumed his duty on 12th April 2004 and as such he governs under new pension scheme and according the contributing amount in GPF and in terms of new pension scheme was recovered from the pay and allowance of the applicant."

10. Rejoinder Affidavit have also been filed reiterating the earlier.

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11. We have heard counsel for the parties and perused the pleading on record. There is no doubt about the fact that the applicant has been notionally appointed w.e.f. 27.9.93 by an order of the Court. Admittedly applicant was one of the selected candidates and his appointment letter was also issued. However, he was not allowed to join due to a ban on the recruitment during that period. There were seven candidates in the select list and one by one all were appointed, some through courts order, notionally with back dates. All such candidates accept the applicant joined prior the closure of old pension scheme and hence are enjoying the benefit of old pension scheme. It is no fault of the applicant that he could join the service after 1.1.2004 when the new pension scheme came into effect. If this situation is allowed to continue the applicant would suffer from a double jeopardy. Then tribunal is therefore, of the firm view that the rule of natural justice demands that applicant is allowed the benefit of old pension scheme in the same manner as his other colleagues selected along with him. With those observations the OA is allowed. No costs.



Member-A

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