

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 21.01.2014

OA No. 272/2011

Mr. Amit Mathur, counsel for applicant.
Mr. Anupam Agarwal, proxy counsel for
Mr. Mukesh Agarwal, counsel for respondent no. 2.
Mr. Gaurav Jain, counsel for respondent nos. 1, 3 to 5.

Heard learned counsel for the parties.

Order is reserved.

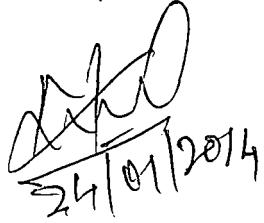


(G. GEORGE PARACKEN)
JUDICIAL MEMBER

Kumawat

Date 24/01/2014

Order pronounced today in the Open
Court by the aforesaid Bench.


24/01/2014

For C-O

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 272/2011

**Date of Reserve: 21/01/2014
Date of pronouncement : 24/01/2014**

CORAM

Hon'ble Shri G. George Paracken, Judicial Member

Manoj Kumar Meena Son of Shri Ram Prasad Meena, Aged about 36 years, resident of C-5/2, Ajay Meru, Dad Colony, Haldighati Line, Khatipura Road, Jaipur. Presently posted as senior Auditor, C.D.A., Regional Office, Jaipur.

....Applicant

(Amit Mathur, counsel for the applicant.)

VERSUS

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. The Secretary, Staff Selection Commission, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Kendriya Karyalaya Parisar, Lodhi Road, New Delhi.
3. Controller General of Defence Accounts, Ulan Batar Road, Palam, Delhi Cantt. Delhi.
4. Principal C.D.A., South West Command, Khatipura Road, Jaipur.
5. Principal C.D.A., South Command, Finance Road, Lekha Nagar, Pune.

....Respondents

(Mr. Mukesh Agarwal counsel for the respondents No. 1 & 2)

(Mr. Gaurav Jain counsel for the respondents No. 3 to 5)

O R D E R

The grievance of the applicant in this O.A. is that the respondents have arbitrarily denied to him the benefits of

pension and GPF scheme available to the government employees prior to 01/01/2004.

2. The brief facts of the case are that the applicant was a candidate for the Combined Graduate Level Examination in Scheme-B for which the Staff Selection Commission (SSC for the) issued the notification in the year 1999. Having qualified in the aforesaid examination, he was initially nominated for the appointment as Auditor in the Office of the Chief Commissioner Income Tax, Kanpur. However, by that time, Chief Commissioner Income Tax had already withdrawn vacancies reported to the SSC as they ceased to exist on account of the subsequent re-structuring of the department. Thereafter, the SSC, vide its letter dated 02/12/2003, nominated him to the Office of the Controller of Defence Accounts, Southern Region. After completion of the pre-appointment formalities, they vide their letter dated 26/03/2004 issued appointment letter to the applicant and he joined the said office as Auditor on 02/04/2004. However, he was not allowed to be the beneficiary of Old Pension Scheme which expired on 31/12/2003. He has therefore, filed this O.A. seeking a direction to the respondents to treat him as a beneficiary of Old Pension Scheme and not as the beneficiary of New Pension Scheme which came into existence w.e.f. 01/01/2004.

3. The respondents in their reply have stated that the applicant was appointed as Auditor only on 02/04/2004 even though he cleared Combined Graduate Level Examination Exam conducted by SSC in the year 1999. They have also stated that his dossiers were received from the SSC on 10/10/2013 and after completion of formalities, the appointment letter was issued to him on 26/03/2004 and he reported for duty on 02/04/2004. Therefore, he is covered by the provisions New Pension Scheme introduced by the Government of India, Ministry of Finance, Department of Economic Affairs vide notifications dated 22/12/2003 followed by the guidelines issued by them on 07/01/2004 and 04/02/2004. The said scheme is applicable for all new recruits of the Central Government Service from 01/01/2004.

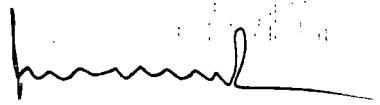
4. I have heard the learned counsel for the applicant Mr. Amit Mathur and the learned counsel for the respondents Mr. Mukesh Agarwal and Mr. Gaurav Jain. Admittedly, the applicant was a candidate of the Combined Graduate Level Exam Scheme-B held by the SSC in the year 1999 and after having qualified in the aforesaid examination, by virtue of his position in the merit list, the SSC had earlier nominated him As auditor in the Office of the Chief Commissioner of Income Tax, Kanpur. Again it is an admitted position that he was not allowed to join there not because any of his fault but due to

non-availability of vacancies as the said office had undergone restructuring and the vacancies reported by them to the SSC ceased to exist. It was for the said reason that the SSC has re-assigned to the Office of the Controller of Defence Accounts, Pune. After they offered him the appointment as Auditor vide their letter dated 26/03/2004, he promptly reported for duty on 02/04/2004. By that time a number of his batch-mates including his juniors in the merit list have already joined in different departments. They have also been given the benefit of the Old Pension Scheme.

5. It is well settled law that a mistake committed by the employer cannot be recoiled upon the employee. However, in this case, not only the applicant was denied the opportunity to join duty and work along with his batch-mates resulting in substantial financial loss to him, he has also been subjected to other disadvantages. In fact, the applicant is entitled to all advantages and benefits to which his batch-mates are entitled to except the back wages on the principle of no work no pay. In view of the above facts and circumstances of the case, I allow this Original Application and direct the respondents to treat him as a beneficiary of Old Pension Scheme known as GPF scheme and not as beneficiary of the New Pension Scheme which came in existence w.e.f. 01/01/2004. The respondents shall also pass appropriate orders in compliance



of aforesaid directions within a period of two months from the date of receipt of this order. There shall be no order as to costs.


(G. George Paracken)
Member (J)