CENTRAL ADMINISTRATIVE TRIBUNAL,

JAIPUR BENCH

Orders pronounced on: 29.7.2016
(Orders reserved on: 26.07.2016)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &**
HON'BLE MRS. MEENAKSHI HOOJA, MEMBER (A)

(1) O.A.NO.125/2013

Chandraveer Singh s/o Swayam Singh,aged about 27 years, r/o village and post Sinsini, presently working as Majdoor in Ammunition Depot, Bharatpur.

(2) O.A.NO.126/2013

Mr. Kedar mal Meena s/o shri Rewar Mal Meena, aged about 40 years, r/o Parli Balaji mod, presently working as Majdoor in Ammunition Depot, Bharatpur.

(3) O.A.NO.127/2013

Harbhan Singh s/o Bhoodev Singh, aged about 53 years, r/o village om nagar, natwar nagar, Dholi Pyau, Mathura, presently working as Majdoor in Ammunition Depot, Bharatpur

(4) O.A.NO.128/2013

Jawaher Lal yogi s/o Banwari Lal Yogi, aged about 35 years, r/o Suraj Nagar Niwaru Road, Jhotwara, Jaipur, presently working as Majdoor in Ammunition Depot, Bharatpur.

(5) O.A.NO.129/2013

Ram Niwas s/o Paltu ram aged about 38 yaers, r/o village and post Sarai Kalan, teh., Mundawer, Alwar, presently working as Majdoor in Ammunition Depot, Bharatpur.

(6) O.A.NO.130/2013

Shyam Sunder s/o Ram lal, aged about 36 years, r/o village nangal Babaji, post Badour, teh. Bharatpur, presently working as Majdoor in Ammunition Depot, Bharatpur.

(7) O.A.NO.131/2013

Shanker Singh s/o Vejendra singh, aged about 51 years, r/o village Kasoda, post Kasoda, teh. Bharatpur, presently working as Majdoor in Ammunition Depot, Bharatpur.

(8) O.A.NO.132/2013

Sishu Pal s/o Data Ram, aged about 34 years, r/o Gummber, post Bal Kesher, Agra presently working as Majdoor in Ammunition Depot, Bharatpur.

(9) O.A.NO.133/2013

Rohitas s/o Mangu Ram, aged about 27 years, r/o Shypura, post , teh. Deeg, Bharatpur, presently working as Majdoor in Ammunition Depot, Bharatpur.

(10) O.A.NO. 134/2013

Baney Singh s/o Vipatti Ram, aged about 36 years, r/o village and post Jai Choli post Par, teh., Roopbas, district Bharatpur, presently working as Majdoor in Ammunition Depot, Bharatpur.

(11) O.A.NO. 135/2013

Jagbir Singh s/o Kishan Singh, aged about 34 years, r/o Village and post , Distt., Mathura, presently working as Majdoor in Ammunition Depot, Bharatpur.

(12) O.A.NO. 136/2013

Ram Kishore s/o Gopi Singh, aged about 31 years, r/o Village Meena Nagar, Post Koshi Kalan, teh. Chhala, distt. Mathura, presently working as Majdoor in Ammunition Depot, Bharatpur.

(13) O.A.NO. 137/2013

Prem Singh s/o Ramkhiladi, aged about 29 years, r/o village Kasooda, teh. Bharothi, distt. Bharatpur, presently working as Majdoor in Ammunition Depot, Bharatpur.

(14) O.A.NO.138/2013

Avinash Kumar s/o Ganeshi Singh, aged about 27 years, r/o village and post kasoda distt., Bharatpur, presently working as Majdoor in Ammunition Depot, Bharatpur.

(15) O.A.NO. 139/2013

Darshan singh s/o kishori lal, aged about 29 years, r/o village and post Sukka ki Nangal, P.O. Bhandur, Distt. Bharatpur, presently working as Majdoor in Ammunition Depot., Bharatpur.

(16) O.A.NO. 140/2013

Shiv singh s/o Nathi Singh, aged about 49 years, r/o Village and post Jatoli Thoon, teh. Deeg, Dist., Bharatpur, presently working as Majdoor in Ammunition Depot, Bharatpur.

(17) O.A.NO.141/2013

Mohan Singh s/o Manohar Singh, aged about 35 years, r/o h.no. 663, Brij Nagar, Devkaran School wali Gali, Near Kakji Ki Kothi, Bharatpur, presently working as Majdoor in Ammunition Depot, Bharatpur.

(18) O.A.NO.142/2013

Madan Lal S/o Giriraj Prasad, aged about 44 years, r/o Village and post Abrari, The. Kumher, Distt. Bharatpur, presently working as Mazdoor in Ammunition Depot, Bharatpur.

(19) O.A.NO.143/2013

Mohan singh s/o Avtar Singh, aged about 47 years, r/o village and post teh. Kumher, presently working as Majdoor in Ammunition Depot, Bharatpur.

(20) O.A.NO.144/2013

Batul singh s/o Nathi Singh, aged about 51 years, r/o village Puraka, Post Khanduwali, teh Nagar Bharatpur, presently working as Majdoor in Ammunition Depot, Bharatpur

(21) O.A.NO.145/2013

Raghuveer Singh s/o Jamuna, aged about 50 years, r/o village Gundwa, post Bhandor, Teh. And distt. Bharatpur, presently working as Majdoor in Ammunition Depot, Bharatpur.

(22) O.A.NO.146/2013

Bhagwan Singh s/o Yad Ram Saini, aged about 27 years, r/o village Gundwa, post Bhandor, Distt., Bharatpur, presently working as Majdoor in Ammunition Depot, Bharatpur.

(23) O.A.NO.147/2013

Suresh Chand s/o Mitti Lal, aged about 36 years, r/o village athpura, post Allopura, distt. Maipuri(U.P.), presently working as Majdoor in Ammunition Depot, Bharatpur.

(24) O.A.NO.148/2013

Suresh Chandra s/o Prahalad Singh, aged about 47 years, r/o village and post Sinsini, teh. Deeg, Bharatpur, presently working as Majdoor in Ammunition Depot, Bharatpur.

(25) O.A.NO.149/2013

Ram Veer Singh s/o Kishan Singh, aged fabout 51 years, r/o village and post, Mandha Post Sankh, The and Distt. Mathura, presently working as Majdoor in Ammunition Depot, Bharatpur.

(26) O.A.NO.150/2013

Nahar Singh s/o shri Charan Singh, aged about 48 years, r/o village and post Nangla-Harchand, post Sogar (Bharatpur), presently working as Majdoor in Ammunition Depot, Bharatpur.

(27) O.A.NO.151/2013

Motni w/o Ajeet Singh, ahed about 37 years, r/o village and post Bachmadi, presently working as Majdoor in Ammunition Depot, Bharatpur.

(28) O.A.NO.152/2013

Vinod kumar Sharma s/o Khemchand, aged about 32 years, r/o Murwara, Distt. Bharatpur, presently working as Majdoor in Ammunition Depot, Bharatpur.

(29) O.A.NO.153/2013

Tej Singh s/o shri Ram singh, aged about 36 years, r/o village , post Borai, presently working as Majdoor in Ammunition Depot, Bharatpur.

(30) O.A.NO.154/2013

Yogesh Sharma s/o Rajendrad Prasad, aged about 27 years, r/o Jamun Ki Bagichi, goalpura Road, Subash Nagar, Bharatpur, presently working as Majdoor in Ammunition Depot, Bharatpur.

(31) O.A.NO.155/2013

Raj Kishore s/o Brij Kishore, aged about 33 years, r/o village and post Ajnothi, post Ladpura, teh. Chhata, Dist. Mathura, presently working as Majdoor in Ammunition Depot, Bharatpur.

(32) O.A.NO.156/2013

Hardam Singh s/o Harcharan Singh, aged about 49 years, r/o village and post Nagla Hathuni Post- Hathuni, Teh. Bharatpur, presently working as Majdoor in Ammunition Depot, Bharatpur.

(33) O.A.NO.157/2013

Bijendra Singh s/o Hidda singh, aged about 44 years, r/o Village and post Takla, Teh. Kumher, Bharatpur, presently working as Majdoor in Ammunition Depot, Bharatpur.

(34) O.A.NO.158/2013

Rupesh s/o Mitthan Lal, aged about 30 years, r/o Chaura Ka Hanuman Colony, Char Sheher Ka Naka, Sharma Farm Road, Gwalior, presently working as Majdoor in Ammunition Depot., Bharatpur .

(35) O.A.NO.159/2013

Lal Singh s/o Rohan Singh, aged about 34 years, village and post Jatholi, Rathwan, Teh. And Distt. Bharatpur, presently working as Majdoor in Ammunition Depot, Bharatpur.

(36) O.A.NO.160/2013

Kunwar Pal Singh s/o Ramesh Chan, aged about 46 years, r/o Garroly, post Dauthlothi, Teh. Deeg, Bharatpur, presently working as Majdoor in Ammunition Depot, Bharatpur.

(37) O.A.NO.161/2013

Sunheri s/o Ramm Babu, aged about 28 years, r/o Village and Post Mai, Post Bharali, teh. Baseri, Distt. Dholpur, presently working as Majdoor in Ammunition Depot, Bharatpur.

(38) O.A.NO.162/2013

Ramveer Singh s/o Mahendra Singh, aged about 29 years, r/o village and post Kasoda Distt., Bharatpur, presently working as Majdoor in Ammunition Depot, Bharatpur.

(39) O.A.NO.163/2013

Bablu Singh s/o Mansingh, aged about 27 years, r/o village and post takha, disst. Bharatpur, presently working as Majdoor in Ammunition Depot, Bharatpur.

(40) O.A.NO.164/2013

Arvind Sharma s/o Mohan Lal Sharma, aged about 32 years, r/o village and post Nagla madhopur, post Saunkari, distt., Alwar, presently working as Majdoor in Ammunition Depot, Bharatpur.

(41) O.A.NO.165/2013

Rajesh Kumar vichoria s/o Munshi lal, aged about 32 years, r/o Gurveera post Dhanders, teh. Kaman, Distt. Bharatpur, presently working as Majdoor in Ammunition Depot, Bharatpur..

(42) O.A.NO.291/00214/2014 & M.A.No. 291/00202/2014

Raju Singh s/o Shri Ramu Singh, aged about 31 years, r/o House no. 43/13, village and post Kanjauli line Distt. Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur.

(43) O.A.NO.291/00215/2014 & M.A.No. 291/00201/2014

Balbir Singh s/o Shri Om Prakash Singh, aged about 30 years, r/o village and post Kasoda Distt. Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur.

(44) O.A.NO.291/00216/2014 & M.A.No. 291/00200/2014

Kush Pal Singh s/o Shri Harendra Singh, aged about 36 years, r/o Dhai Ji Ki Haveli, Atal Band Distt. Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur.

(45) O.A.NO.291/00217/2014 & M.A.No. 291/00199/2014

Harlal S/o Shri Shivlal, aged bout 33 years, r/o village Achalpura, post Mukhara, Distt. Bharatpur, Rajasthan, presently working as Mazdoor in Ammunition Depot, Bharatpur.

(46) O.A.NO.291/00218/2014 & M.A.No. 291/00197/2014

Ashok Kumar s/o Shyam Babu, aged about 34 years, r/o Mori Char Bagh, Near Sindhi Dharmshala, Distt. Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur.

(47) O.A.NO.291/00219/2014 & M.A.No. 291/00198/2014

Jitendra Singh s/o Devi Singh, aged about , r/o village and post Sogar, teh. Kumher, Distt. Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur.

(48) O.A.NO.291/00220/2014 &
M.A.No. 291/00196/2014

Ashok Kumar Solanki s/o Shri Bhoop Singh, aged about , r/o village and post Bachhamadi (Noh), Distt. Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur.

(49) O.A.NO.291/00221/2014 &
M.A.No. 291/00195/2014

Shiv Ram Singh s/o shri Mohan Singh, aged about , r/o Qtr. No. 4, Type-III, Telephone Colony, Rajendra Nagar, Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur

(50 O.A.NO.291/00222/2014 &
M.A.No. 291/00194/2014

Dinesh Kumar s/o shri Bhagwan Singh, r/o Village and post Jaghina (3 siya), Distt. Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur.

(51) O.A.NO.291/00223/2014 &
M.A.No. 291/00193/2014

Krishna Kumar Sharma s/o Radhey Lal Sharma, aged about , r/o Village and post Gunsara teh. Kumher, Distt. Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur.

(52) O.A.NO.291/00224/2014 &
M.A.No. 291/00192/2014

Sohan Lal s/o Peetamber, aged about r/o Village and post Malah Distt. Bharatpur, Rajasthan, presently working as Majdoor in Depot, Bharatpur.

(53) O.A.NO.291/00225/2014 &
M.A.No. 291/00191/2014

Arun Singh s/o Shri Brajindra Singh, aged about 30 years, r/o village and post Burawai Chiksana, teh. Bharatpur, Distt. Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur.

(54) O.A.NO.291/00226/2014 &
M.A.No. 291/00190/2014

Nawal Singh s/o Shri Ram Singh, aged about years r/o village Addi and post Kasauda, teh. Bharatpur, Distt. Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur.

(55) O.A.NO.291/00227/2014 &
M.A.No. 291/00189/2014

Kunwar Singh s/o Shri Bhagwat Singh, aged about 31 years, r/o village Addi and post Kasauda, teh. Bharatpur, Distt. Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur.

(56) O.A.NO.291/00228/2014 &
M.A.No. 291/00188/2014

Rajesh Kumar s/o Shri Gopal Singh, aged about 30 years, r/o village and post Ucchhain, teh. Roopwaas, Distt. Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur.

(57) O.A.NO.291/00229/2014 &
M.A.No. 291/00187/2014

Sanjeev Kumar s/o Shri Naresh Pratap Singh, aged about 32 years, r/o village Rampur post Jamalpur, Distt. Munger, Bihar, presently working as Majdoor in Ammunition Depot, Bharatpur.

(58) O.A.NO.291/00230/2014 &
M.A.No. 291/00186/2014

Mukesh Kumar s/o Shri Keshav Dayal, aged about 32 years, r/o village and post Baben, Teh. Kumher, Distt. Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur.

(59) O.A.NO.291/00231/2014 &
M.A.No. 291/00185/2014

Dashrath s/o Ram ji Lal, aged about 30 years, r/o village Gahlau post Pichuna, Teh. Roopwaas, Distt. Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur.

(60) O.A.NO.291/00232/2014 &
M.A.No. 291/00183/2014

Naresh Kumar s/o Nirpat Singh, aged about 34 years, r/o village and post Ucchain, Teh. Roopwaas, Distt. Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur.

(61) O.A.NO.291/00233/2014 &
M.A.No. 291/00184/2014

Doorendra Prabodh s/o Shri Kailash Chand, aged about , r/o Baben, (Bben) Teh. Kumher, Distt. Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur.

(62) O.A.NO.291/00234/2014 &
M.A.No. 291/00182/2014

Virendra Singh s/o Shri Gajendra Singh, aged about 32 years, r/o Village Malipura, post Sewar, Distt. Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur.

(63) O.A.NO.291/00235/2014 &
M.A.No. 291/00181/2014

Hardev Singh s/o Shri Shyam Lal, aged about 34 years, r/o Village Khanswara, post Paprera, teh, Kumher, via Nadbai, Distt. Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur.

(64) O.A.NO.291/00236/2014 &
M.A.No. 291/00180/2014

Pappu s/o Shri Mahaveer Singh, aged bout , r/o Village Girdharpur, post Kesoda, Distt. Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur.

(65) O.A.NO.291/00237/2014 &
M.A.No. 291/00179/2014

Niranjan Singh s/o Shri Kishan Singh, aged about 50 years, r/o Village Moroli, post Udhyog Nagar, Distt. Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur.

(66) O.A.NO.291/00238/2014 &
M.A.No. 291/00178/2014

Narendra Singh s/o Shri Mohan Singh, aged about 28 years, r/o near DAV School, Golpura Road, Subash Nagar. Distt. Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur.

(67) O.A.NO.291/00239/2014 &
M.A.No. 291/00177/2014

Akko Singh s/o Shri Dhanush Singh, aged about 30 years, r/o village Kanjauli, post Kasoda, Distt. Bharatpur, Rajasthan, presently working as Majdoor in Ammunition Depot, Bharatpur.

Applicants

Versus

1. Union of India
through the Secretary to the Govt. of India,
Ministry of Defence,
New Delhi.

2. Officer Incharge, A.O.C. Records,
Secundrabaad.

3. The Commandant,
Ammunition Depot,
Bharatpur.

... Respondents

Present: Mr. P. N. Jatti, Advocate, for the applicants.
Mr. D.C. Sharma, Advocate, for the Respondents.

O R D E R
HON'BLE MR. SANJEEV KAUSHIK , MEMBER (J)

1. The facts and the questions of law involved in these cases are common and as such these are being disposed of by a common order. The facts are being taken from O.A. No. 126/2013 – **Kedar Mal Mena Vs. UOI etc**.

2. The applicant has filed this O.A with a prayer to quash the order dated 14.2.2012 read with order dated 12.1.2012 vide which he was informed that the existing Pension Scheme was in force upto 31.12.2003 and new pension Scheme introduced w.e.f. 1.1.2004 is applicable to all the Central Government Servants appointed on or after 1.1.2004 and since applicant was appointed in the year 2004, thus, would not be covered by existing Rules, 1972.

3. The facts of the case which lead to filing of O.A. are that the Ammunition Depot, Bharatpur, circulated a notification in the month of September, 2003 inviting applications for the posts of Mazdoors. The applicant claims that the process of appointment was finalized and appointment / selection letters were issued in the month of November, 2003. It is submitted that the Government servants who have been appointed / selected prior to 1.1.2004 are to be treated under the CCS (Pension) Rules, 1972 and those who have been appointed / selected on 1.1.2004 or subsequently are to be governed by New Pension Scheme. The claim of the applicant is that since the applicant was selected as per the

notification issued in the month of September, 2003 and appointed in the month of November, 2003, he is governed by CCS (Pension) Rules, 1972. The representation dated 12.9.2011 filed by the applicant for being covered under the CCS (Pension) Rules, 1972 was declined by Annexure A-1, Hence this Original Application.

4. The respondents have opposed the O.A. by filing reply. They submit that notification for selection to the post of Mazdoors was published in news papers in September, 2003 and competitive physical test and interview was conducted during the period 9.10.2003 to 28.10.2003. The applicant was one of the selected candidates. Selection letter (Not appointment order) was issued to him on 10.11.2003. They have submitted that the selection letter enclosed as Annexure A-3 has never been issued / signed by the Depot and is a forged document. As-per the original letter issued to applicant, selection was provisional and subject to authenticity of documents. Accordingly, after confirmation of authenticity of his document, appointment order was issued to the applicant on 3.2.2004 against which he joined his duties on 9.2.2004 and formal appointment order was issued on 9.2.2004 (Annexure R-2). Persons who joined their duty prior to 1.1.2004 are authorized for pension under CCS (Pension) Rule, 1972 and the candidates who have joined duty on or after 1.1.2004 are to be covered under the New Pension Scheme. The applicant having joined his duties after

appointment on 9.2.2004, he is not entitled to pension under CCS (Pension) Rules, 1972. Copy of selection order dated 10.11.2003 is enclosed as Annexure R-1. New Structured Defined Contribution Pension System is applicable and mandatory for all newly entrants to Central Government service with effect from 1.1.2004. Copies of Govt. of India, Ministry of Finance, Notification No. 5/7/2003-ECB & PR dated 22.12.2003, Govt. of India, Deptt. Of Pension & P.W. O.M. No. 38/58/06-P&PW (A) dated 11.10.2006 and 5.3.2008 are placed on record as Annexure R-3.

5. They submit that as per para 2 of order dated 11.10.2006 (Annexure R-3), "the employees who were put on induction training after their appointment prior to 1.1.2004 and are paid salary from that date would be covered under CCS (Pension) Rules, 1972).

6. The applicant has filed a rejoinder with a view to rebut the submissions made in the written statement.

7. We have heard learned counsel for the respective parties at length.

8. Mr. P.N. Jatti, learned counsel for the applicant argued that the recruitment process had been initiated in 2003 itself and the applicants stood selected in 2003 and, therefore, they would be covered under the Old Pension Scheme as the term "appointment" would take within its sweep the process of recruitment also and it cannot be separated for the purpose of denying the benefit of old pension scheme to the

applicants. This was hotly contested by learned counsel for the respondents stating that the term appointment is independent of recruitment process and one does not enter into cadre, unless a formal appointment order is issued and in this case the appointment has been made after 1.1.2004 and as such the applicant would be governed under the New Pension Scheme.

9. Mr. Jatti, learned counsel for the applicants vehemently argued that by the time the applicants were given appointment order of their appointment, the Government of India by notification dated 22.12.2003, approved the proposal to implement the new restructured defined Contribution Pension System for the new recruits to Central Government joining service on or after 01.01.2004. The new Pension Scheme replaced the then existing CCS (Pension) Rules, 1972 w.e.f. 01.01.2004. The CCS (Pension)Rules, 1972 continued to govern all the employees selected prior to 31.12.2003. He submits that the applicants cannot be made to suffer due to delayed process of appointment. However, they are being arbitrarily and illegally compelled to be governed under the new scheme which has come into force w.e.f. 01.01.2004 under which they have to contribute 10% of their basic pay plus dearness allowance which is being deducted from their salary bill every month. The CCS (Pension) Scheme 1972 is very much different and more beneficial to the employees. Had the Applicants been given

appointment letter in 2003, they would have also joined immediately and would have been governed by CCS(Pension) Rules, 1972. This was resisted by the learned counsel for the respondents.

10. Mr. Sharma, learned counsel for respondents reiterated what has been stated in the written statement.

11. We have given our deep consideration to the respective submissions made by learned counsel for the parties and perused the material on file.

12. The sole issue that requires to be examined and answered by us is as to whether the applicants, whose selection process had started in last quarter of 2003, but actual appointment came to be made after 1.1.2004, would be governed by the CCS (Pension) Rules, 1972 or New Pension which has been introduced for persons appointed on or after 1.1.2004.

13. Even though the authenticity of the letter dated 11.11.2003 (Annexure A-3) is disputed by the respondents, yet even if it is accepted to be true for the sake of argument only, it would make clear that the same was in furtherance of recruitment process only as it was issue for completion of formalities before actual appointment is made. It indicated that the applicant had been selected for appointment (not appointed) as Mazdoor in pursuance of advertisement dated 6.9.2003 and 19.9.2003. It was made clear that the selection (not appointment) is provisional and shall be subject to verification of date of birth to ascertain age as on last day of

submission of application, educational certificate and police verification as applicable and blank form for attestation and medical examination were also forwarded for completion and due attestation which were to be submitted by the applicants to the authorities. The applicants have not enclosed any appointment order. However, a copy of same has been enclosed by the respondents at Annexure R-2 dated 3.2.2004 which offers theappointment to the applicant inviting him to join the post if the terms and conditions are acceptable to him. The selection and appointment is to take effect from the date of joining. The terms and conditions of appointment are mentioned in the letter/ order. Thus, it can safely be concluded that the recruitment process which had been set in motion in 2003, came to an end with appointment of applicants February, 2004. The "recruitment process" and "recruitment" or "appointment" are different and distinct conspectus which the applicants are trying to intermingle to create a confusion. The recruitment process may have been initiated in 2003 but the actual appointment came to be made in February, 2004 and it cannot be relate back to 2003 for the purpose of claiming benefit under old Pension Scheme.

14. Hon'ble Apex Court has observed that appointment to a post is made by issuing a letter of appointment indicating the terms of the appointment and requesting the candidates concerned to signify his acceptance of the same. In the

absence of any special statutory provision, etc., contract of service must be preceded by an offer and acceptance. The agreement in respect of appointment on and from a particular date would be binding on the parties. There cannot be any retrospective appointment in direct recruitment. The service rules and regulations which were prevalent on the date of appointment of the applicant will govern his service under the respondent authorities.

15. Learned counsel for the applicant vehemently argued on the basis of instructions dated 11.10.2006 (Annexure A-5) issued under New Pension Scheme which has been issued on the topic of "Applicability of CCS (Pension) Rules, 1972 in respect of those appointed prior to 1-1-2004 and put on induction training and it has been clarified as under :-

> ".. it is clarified that the employees who were put on induction training after their appointment prior to 1-1-2004 and are paid salary from that date would be covered under CCS (Pension) Rules, 1972".

16. A perusal of the clarification would make it amply clear that the same does not help the applicants at all as it relates to persons who are put on "induction training after appointment" prior to 1-1-2004 and are paid salary prior thereto, are to be governed by old Pension Scheme. In this case the applicants have not been put on induction training nor their appointment has taken place prior to 2003 and,

therefore, the reliance placed by them on this clarification is also misconceived.

17. It is well settled proposition of law by the Hon'ble Supreme Court that merely because a candidate is eligible when the advertisement was issued or that the name of candidate is included in the select list, would not confer any right on the candidate to be appointed but the appointment would take effect from the date of appointment and not from the date of passing the examination. The Hon'ble Apex Court has consistently held that even if a number of vacancies were notified for appointment and adequate number of candidates were found successful, they would not acquire any indefeasible right to be appointed against the existing vacancies. Reliance in his regard can be placed upon **Shankarsan Dash v. Union of India**, (1991)3 SCC 47; **Asha Kaul v. State of J&K**, (1993)2 SCC 573; **Union of India v. S.S. Uppal**, (1996) 2 SCC 168 and **Hanuman Prasad v. Union of India**, (1996)10 SCC 742.

18. We also notice that the applicants have failed to challenge the validity of the cutoff date of New Pension Scheme and as such they cannot be allowed to claim that they should be governed under the old Pension Scheme when the cutoff date does not help them at all so as to make them fall under that scheme.

19. We are fortified in our view from decisions of two Benches of this Tribunal. The Chandigarh Bench of this Tribunal had occasion to deal with the issue in O.A.No. 751-CH-2009 titled **Dinesh Devgun & Others Vs. Union of India & Others**, decided on 27.10.2010. The Court has held as under :-

> "2. The projected case of the applicants is that the process to fill up the posts of Clerks was initiated by issuance of an advertisement dated 28.3.2001. At that time the GPF Scheme with Pension was in operation. However, a lot of time was consumed in completion of the appointment process and the applicants ultimately came to be appointed in July, 2004 only, by which time the new CPF Scheme of 2004 had come into operation w.e.f. 1.1.2004. It is further the case of the applicants that the new CPF Scheme has come into operation only when letter dated 11.6.2009 was issued, making it operational and as such they have to be treated as having been appointed under the old GPF Scheme.
>
> 3. The respondents have filed a reply to contest the claim of the applicants. Their plea is that this issue has already been settled by this Court in the identical case of Nazar Kumar & Others Vs. Union of India & Others.
>
> 4. We are not reproducing the pleadings of the parties in detail as the issue is no longer res-integra and stands settled by this very Bench of the Tribunal in the case of Nazar Kumar & Other Vs. Union of India & Others etc. (O.A.No.338-CH-2008 and O.A.No.408-CH-2008) decided on 10.06.2010. Para 15 of the judgment being relevant is reproduced as under:
>
> > '15. In view of the above proposition of law laid down by the Hon'ble Supreme Court, the U.T. Chandigarh, while adopting the notification dated 12.12.2006 (Annexure A-3) issued by the State of Punjab introducing new CPF Scheme for its employees w.e.f. 1.1.2004 vide order dated 14.2.2007 (Annexure A-2) and also making necessary amendment in the relevant rules w.e.f. 1.1.2004, could not make it effective from any other date as the complete scheme was made effective and the said scheme takes effect w.e.f. 1.1.2004. We do not find any illegality in the order dated 14.2.2007, Annexure A-2 or the

Circular dated 12.12.2006 (Annexure A-3) as it does not make any amendment to the basic scheme. The date from which the Scheme is to take effect is mentioned in the Scheme itself. We do not find that any grounds have been made out to interfere with the date from which the new Scheme has been made effective in U.T. Chandigarh i.e. 1.1.2004. In so far as claim of ante-dating of their appointment is concerned, that can also not be accepted in view of the rejection of such claim in an earlier petition. Under some misconception, the applicants contributed towards GPF Scheme and such amount is now being refunded to them and they are to be made members of CPF Scheme, having been substantively appointed after 1.1.2004. This can also not be faulted with.'

4. Finding that the case of the applicants is covered on all fours with the decision aforesaid, this Original Application is dismissed."

20. Similarly in almost identical circumstances Bombay Bench of this Tribunal in O.A.No. 267/2010 – **Shri Atul Pandey Vs UOI etc**. decided on 13.7.2012 has held as under :-

"20. The applicant has never challenged the delay in issuing the offer of appointment. His first representation is of the year 2004 whereby he simply requested the authorities to cover him under the old Pension Scheme of 1972. He made his next representation in this regard in the year 2008. It is evident from the chart given at Para 4.6 of the O.A. that the applicant had not been singled out in respect of issuance of the offer of appointment in February, 2004. One Mr. Pankaj Kumar Singh was also given the offer of appointment in March, 2004. Had the applicant approached a competent Court of Law challenging denial of the offer of appointment along with other similarly situated candidates who got their appointment in 2003 at the relevant time, and had the Court of Law granted the relief to give retrospective effect to his appointment from the date others were appointed, he could have claimed the benefit of old Pension Scheme which was in force till 31.12.2003. Having not done so, it is not open to him to claim any relief to the extent that he should be covered 23 OA NO.267/2010 under the Old Pension Scheme which was not available at the time of his appointment. It is also surprising that he did not even challenge the

communication made to him dated 19.01.2006 which is only impugned in this O.A. in the year 2010. The plea taken by the applicant with regard to question of limitation is that his representations dated 22.09.2008 and 09.09.2009 are pending with the DOPT and he has to compulsorily contribute every month from his salary bill certain amount towards his pension in terms of new restructured defined Contribution Pension Scheme, 2004."

21. The applicants herein had not even been appointed in 2003 i.e. prior to 1.1.2004 and as such they cannot claim that they have to be governed by old Pension Scheme.

22. In view of the afore said discussion, it is held that the selection of the applicants had taken place in 2003 but their actual appointment came to be made after 1.1.2004 and as such they would be governed by New Pension Scheme only and their appointment made in 2004 cannot be related back to a period prior to 1.1.2004 so as to make them eligible for pension under CCS (Pension) Rules, 1972 and as such all these Original Applications fail and are dismissed accordingly leaving the parties to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(MRS. MEENAKSHI HOOJA)
MEMBER (A)

Place: Jaipur
Dated: 29.7.2016

HC*