

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00235/2018

RESERVED ON: 30.10.2018

Jodhpur, this the 12th November, 2018

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Shri Neeraj Kumar Meena S/o Shri Narayan Sahai, aged about 38 years, b/c Mina, Quarter No. 06, Type-V, Kendranchal, GPRA, Pali Road, Jodhpur.

[Presently working as Executive Engineer, IIT, J.P.D.-II, Central Public Works Department, Nirman Bhawan, Circuit House Road, Ratnada, Jodhpur]

.....Applicant

By Advocate : Dr RDSS Kharlia

Versus

1. Union of India through the Secretary Ministry of Housing and Urban Affairs (Government of India) Room No. – 122, C-Wing, Nirman Bhavan, MA Road, New Delhi-110011.
2. Central Public Works Department through the Director General, Room No. 101, A Wing, Nirman Bhavan, MA Road, New Delhi-110011.
3. Pay & Accounts Officer (NZ), M/o Urban Development, Central Public Works Department, East Block, Level-6, R.K. Puram, New Delhi – 110066.
4. Pay & Accounts Officer, Central Pension Accounting Office, Ministry of Finance, Department of Expenditure, Trikoot-II, Bhikaji Cama Place, New Delhi – 110 066.

.....Respondents

By Advocate : Mr. K.S. Yadav.

ORDER

The present Original Application has been filed U/s 19 of the Administrative Tribunals Act, 1985 seeking following reliefs:

- (i) The Hon'ble Tribunal may kindly accept the present application on the basis of the facts and ground as mentioned above.
- (ii) Direct the respondents to induct the applicant into the Statutory Pension Scheme under the Central Civil Services (Pension) Rules, 1972 by notionally treating him to have been appointed from the date of occurrence of vacancies in the year 2002.
- (iii) Direct the respondents to stop all the recoveries from the pay and allowances of the applicant towards the New Pension Scheme and refund the entire amount so far recovered from the applicant with interest with immediate effect.
- (iv) Declare the applicant deemed to have been appointed as Assistant Executive Engineer and now presently on the post of Executive Engineer notionally and regulated by the Central Civil Services (Pension) rules, 1972 with all consequential benefits relating thereto.
- (v) Any other appropriate order or direction which this Hon'ble Tribunal may deem fit may kindly be issued in favour of the applicant in the interest of justice;
- (vi) The applicant may be allowed the cost of application.

2. The brief facts of the case are that the applicant appointed on the post of Assistant Executive Engineer in the respondent-department w.e.f. 03.03.2005. in pursuance of notification dated 19.01.2002 (Annex. A/1) issued for various services in the Union of India including Indian Railways, Central Engineering Services (includes CPWD), Military Engineering Service, Central Water Engineering Services etc., The written examination for the post on which applicant was appointed, was held in the month of June, 2002 and he was called for interview on 31.03.2003 by letter dated 28.02.2003 (Annex. A/3). The applicant was declared successful

as per the result of the said selection process declared on 22.04.2003 published on the website of Press Bureau of India (Annex. A/4) informing therein that total 344 candidates would be given appointments as per their selection and out of which 25 members belonged to ST Category under which category the applicant had applied. The applicant was called for medical examination and was found fit for the services by the Medical Board as per the letter dated 05/09.09.2003 (Annex. A/5). The applicant is presently holding the post of Executive Engineer in the respondent-department (CPWD). The grievance of the applicant is that other candidates appointed in pursuance of the same notification as mentioned in para 4.8 of the OA, are governed by CCS (Pension) Rules, 1972 whereas he is governed by New Pension Scheme (NPS). The applicant had approached the concerned authorities for redressal of his grievance but the same has been denied orally by the authorities. The applicant thus inter-alia prayed that he may be inducted into the Statutory Pension Scheme, i.e. CCS (Pension) Rules, 1972 instead of NPS by notionally treating him to have been appointed from the date of occurrence of vacancy in the year 2002 on the ground that his case is fully covered by the judgments rendered by the coordinate benches of this Tribunal as well as Delhi High Court as mentioned in para 5 (D) of the OA. Hence, he filed the present OA seeking relief mentioned above.

3. The respondents filed reply on 29.10.2018. In reply, respondents took the stand that Govt. of India issued notification dated 22.12.2003 (Annex.R/1) whereby New Pension Scheme for all new recruits in the Civil Services of the Central Government on or after 01.01.2004 has come into force. According to the aforesaid notification, the incumbents appointed or entered into services on or after 01.01.2004 are to be governed by New Pension Scheme (NPS). The applicant was selected and appointed later on vide order dated 11.02.2005 and joined his duties w.e.f. 03.03.2005, i.e. much after coming into force of NPS. Therefore, the applicant was brought under the umbrella of NPS and required deductions were started from his pay by adding the contribution of the Government and the same are being deposited as per the provisions of NPS as per the provisions of Notification dated 22.12.2003. Thus, it is clear that the applicant being appointed after 01.01.2004 is entitled to be governed under NPS. Now, after passing of 13 years, the applicant cannot be allowed to turn around and claim retrospective effect of his appointment order issued on 11.02.2005, i.e. 13 years ago. Thus, the OA filed by the applicant is against the principle of approbate and reprobate, i.e. the applicant cannot accept and deny the appointment order issued in his favour at the same time. If the applicant had any grievance regarding any service condition as laid down in the order of appointment dated 11.02.2005, then the

cause of action was available to the applicant on 11.02.2005 itself. In absence of any application for condonation of delay, the OA filed by the applicant is barred by limitation. A person who was neither selected nor joined the post cannot claim any benefit from the retrospective date of determination of vacancy in absence of actively joining such post after due selection under the rules. The basis set out in the OA by the applicant to claim the relief by treating him appointee from the day of vacancy occurred in the respondent-department is against the settled principle of service jurisprudence. The applicant submitted a representation before the respondent-authority which was referred to the higher authorities vide letter dated 05.09.2018 but the same has been turned down vide communication dated 12.09.2018. The applicant joined duties in the respondent-department on 03.03.2005 only, whereas notification for NPS was issued on 22.10.2003. According to the said notification, new recruits appointed on or after 01.01.2004 are to be governed by the NPS and no relief can be granted in the instant OA turning down the provisions of NPS. The respondents thus prayed that OA filed by the applicant is devoid of merits and the same may be dismissed with costs.

4. During course of hearing on 29.10.2018, learned counsel for the applicant submitted that the facts and issues involved in the

OA are covered by the judgments rendered by coordinate benches of this Tribunal. Accordingly, matter was fixed for final hearing at admission stage itself on 30.10.2018 and heard counsel for the parties.

5. Dr RDSS Kharlia, learned counsel for the applicant at the outset submitted that the present case is covered by the judgment rendered by various Hon'ble Courts in following cases:

- (1) CAT Ernakulam Bench judgment dated 15.02.2016 passed in OA No 180/00020/2015 in the case of *Sheeba B. & Anr Vs Union of India & Ors.*
- (2) Hon'ble High Court of Uttarkhand judgment dated 26.06.2004 in *State of Uttarakhand & Ors Vs Balwant Singh & Ors* (Special Appeal No. 330 of 2013).
- (3) CAT Jabalpur Bench, Circuit Sitting : Bailaspur judgment dated 20.04.2017 passed in OA No. 203/00290/2017 in the case of *Suman Kumar Baghmar & Ors Vs Union of India & Ors.*
- (4) Hon'ble Delhi High Court judgment dated 12.02.2015 in *Parma Nand Yadav & Ors Vs. Union of India & Ors* [W.P. (C) 3834/2013].
- (5) Hon'ble Delhi High Court judgment dated 27.03.2017 in *Inspector Rajendra Singh & Ors Vs Union of India & Ors* [W.P. (C) 2810/2016].
- (6) Hon'ble Supreme Court judgment dated 13.08.2008 in *Union of India & Anr Vs Tarsem Singh* [Civil Appeal No. 5151-5152 of 2008]

Relying upon the above judgments, learned counsel for the applicant submitted that the vacancies of Engineering Services arose in the year 2002 and notification was issued on 19.01.2002 (Annex. A/1). The selection of the applicant was made in

pursuance of result declared on 22.04.2003 (Annex. A/4). However, the process for Medical Examination took a long time and finally the applicant was found fit by the Second Medical Board for the services vide letter dated 05/09.09.2003 (Annex. A/5). The applicant was thereafter appointed w.e.f. 03.03.2005 vide order dated 11.02.2005 in pursuance of notification dated 19.01.2002. He thus argued that the delay in issuance of appointment order is on the part of the respondents and it cannot be attributed to the disadvantage of the applicant. His batch-mates who were appointed through Engineering Services Examination – 2002 are also getting benefit of Central Civil Services (Pension) Rules, 1972. He, therefore, prayed that respondents may be directed to induct applicant into CCS (Pension) Rules, 1972 by treating him as appointed from the date of occurrence of vacancies in the year 2002 and stop all recoveries from his pay and allowance towards New Pension Scheme with immediate effect and refund the entire amount to the applicant.

6. On the other hand, Mr K.S. Yadav, learned counsel for the respondents submitted that applicant was appointed vide order dated 11.02.2005 and he joined duties w.e.f. 03.03.2005, i.e. much after coming into force of New Pension Scheme (NPS). The New Pension Scheme came into force w.e.f. 01.01.2004 and if the applicant had any problem he would have raised his grievance

much earlier. Now, after lapse of 13 years from the date of his joining duties, he is seeking notional appointment from respective effect for inducting himself under CCS (Pension) Rules, 1972. Therefore, present OA is barred by limitation and moreover, no separate application seeking condonation of delay has been filed. Hence, in absence of any separate application for condonation of delay, the instant OA is liable to be dismissed as this Tribunal cannot condone the delay in absence of specific prayer made. On merits, he contended that the NPS has came into force w.e.f. 01.01.2004 vide notification dated 22.12.2003 (Annex. R/1). The applicant has contributed towards NPS for last 13 years and now suddenly, he is seeking relief for inducting himself in CCS (Pension) Rules, 1972 without challenging the provisions contained in Notification of NPS. He thus contended that without challenging the provisions of the same, no relief can be granted to the applicant. He further contended that the applicant is seeking retrospective effect of his appointment order issued on 11.02.2005, which is also not permissible as per law. He thus prayed that OA may be dismissed for want of any application for condonation of delay as well as on merits.

7. I have heard the parties and also perused the judgments cited by learned counsel for the applicant as well as documents available on record. Learned counsel for the respondents raised

preliminary objection of limitation and therefore, it is necessary to examine the same before going into merits of the case.

8. Admittedly, pursuant to notification dated 19.01.2002, applicant was issued appointment order dated 11.02.2005 and applicant joined duties in the respondent-department w.e.f. 03.03.2005 after due selection process. The recruitment process was initiated in the year 2002 which in applicant's case culminated in the year 2005. In the meantime, Notification dated 22.12.2003 came to be issued by Govt. of India introducing New Pension Scheme for the persons appointed on or after 01.01.2004. The respondents' contention is that the applicant should have approached this Tribunal at the time of joining duties and now, after lapse of almost 13 years he cannot seek any relief from this Tribunal as the present OA is barred by limitation. Respondents further contended that in absence of any miscellaneous application accompanying the Original Application, seeking condonation of delay, this Tribunal cannot condone the delay on its own. In the Tarsem Singh's case (supra), the Hon'ble Supreme Court after considering the principles underlying continuing wrongs and recurring/successive wrongs in service law dispute held that :

5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to

the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring-successive wrongs will apply.

Furthermore, in Inspector Rajendra Singh's case, the Hon'ble High Court of Delhi in similar matter held that :

26. In this case, the petitioners have not claimed seniority with retrospective effect. They have only claimed pensionary benefits, as per the Old Pension Scheme. The issue has been decided in favour petitioners by a Division Bench of this Court. Judicial propriety demands, as a Bench of coordinate strength, we should follow the judgment of the Division Bench in Shoorvir Singh Negi (Supra).

In view of the aforesaid judgments, preliminary objection raised by learned counsel for the respondents cannot sustain in the eyes of the law and it is incumbent to adjudicate the issue on merits.

9. In support of his contentions on merits of the case, learned counsel for the applicant heavily relied upon the judgments rendered by Ernakulam Bench of the Tribunal in Sheeba B.'s case (supra) and Jabalpur Bench of this Tribunal sitting at Bilaspur in Suman Kumar Baghmar's case. In Sheeba B.'s case (supra), the

applicants were directly recruited on the post of Postal Assistants and appointed in the year 2005 against the vacancies which arose in the year 2002. Hence, in view of Notification dated 22.12.2003 (Annex. R/1), the respondents brought them under New Pension Scheme since they were appointed after 01.01.2004. The applicants therein prayed that they may be brought under statutory pension scheme, i.e. CCS (Pension) Scheme, 1972 pre-dating their appointment from the date of occurrence of a vacancy. The co-ordinate Bench of this Tribunal at Ernakulam after considering all the aspects of the matter, allowed the OA and passed the following directions :

7. After hearing both sides this Tribunal is of the view since the limited prayer of the applicant is to treat the date of arising of the vacancy of the post retrospectively as their date of posting for the purpose of pension, it appears to this Tribunal that the OA can be allowed as no other third party interest is put to jeopardy and as the applicants will not be eligible for other benefits like pay for the aforesaid period. Hence, it is declared that the applicants are deemed to have been appointed from the date the vacancy arose and that they shall be included in the CCS (Pension) Rules, 1972. Respondents are directed to collect necessary subscription under the Provident Fund Rules and the contributions collected from the applicants under the new pension scheme shall be credited to their general provident fund account. It is made clear that no other financial benefits including increments and backwages have been granted to the applicants for the aforesaid period.

Taking into consideration aforesaid judgment, Division Bench of this Tribunal at Jabalpur (Circuit Sitting : Bilaspur) in Sumant Kumar Baghmar's case (supra) have also granted similar relief.

10. In the present case, admittedly, Notification initiating selection process which culminated in joining of the applicant on the post of Assistant Executive Engineer through UPSC in the year 2005 in the CPWD, was issued on 19.01.2002 (Annex. A/1). After qualifying written examination, interview was held in the year 2003 and result was declared on 22.04.2003 (Annex. A/4). Even the applicant was found medically fit for job vide letter dated 05/09.09.2003. It is seen that the appointment letter was issued to the applicant in the year 2005 whereas the selection process was completed prior to 01.01.2004. In between, vide Notification dated 22.12.2003, the New Pension Scheme came into force w.e.f. 01.01.2004. The contention of the applicant is that in view of judgments rendered by the coordinate Benches of this Tribunal after considering the judgments of various Hon'ble Courts, the respondents may be directed to treat his appointment notionally from the date of concurrence of vacancies in the year 2002 so that he may be included in Old Pension Scheme. Facts of the present case are squarely covered by the judgments cited by learned counsel for the applicant and I am in agreement with the view taken by the co-ordinate Benches of this Tribunal. In these matters courts have only extended the limited relief of pre-dating the date of appointment without any back wages, i.e. prior to 01.01.2004 and considered the Annex. R/1 notification issued by the Government, therefore, there is no need to challenge the

Annex. R/1 Notification of New Pension Scheme, as contended by learned counsel for the respondents.

11. Looking to the facts and circumstances of the present case, as well as the judgments rendered by the co-ordinate Benches, the applicant is held to be covered under CCS (Pension) Rules, 1972. Respondents are directed to treat the date of appointment of the applicant retrospectively from the date of occurrence of vacancy (notionally) for the purpose of extending pensionary benefits under CCS (Pension) Rules, 1972 instead of New Pension Scheme. Respondents are also directed to collect necessary subscription under the Provident Fund Rules and the contributions collected from the applicant under the New Pension Scheme shall be credited to his General Provident Fund Account, which shall be opened within 02 months from the date of receipt of a copy of this order. The subscription collected from the applicant under New Pension Scheme shall be credited to his GPF account within six months. It is made clear that no other financial benefits including increments and backwages etc. are to be granted to the applicant for the aforesaid period.

12. Accordingly, OA is allowed to the extent that the above relief is restricted to the present applicant only. No costs.

**[Hina P. Shah]
Judicial Member**

Ss/-