

CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA

OA No. 050/00600/2017

Date of order reserved: 21.05.2018  
Date of order:- 24.05.2018

**CORAM**  
**Hon'ble Shri Jayesh V. Bhairavia, Member [ J ]**

Indradeo Prasad, son of late Lildhari Prasad, resident of village-Imaliya, P.S.- Dhanaura, District- Patna.

.....Applicant

**By Advocate :** Shri S.K. Prasad

Versus

1. The Union of India through the Chairman, Railway Board, Rail Bhawan, Government of India, New Delhi-110002.
2. The Secretary, Railway Board, Government of India, New Delhi-110002.
3. The General Manager, East Central Railway, Vaishali-84418.
4. The Senior Section Engineer (Cand W), East Central Railway, Patna-800001.
5. The Senior Divisional Finance Manager, East Central Railway, Danapur, Patna 801503.

.....Respondents

**By Advocate:** Shri B.K. Choudhary  
Shri D.K. Verma

**O R D E R**

**Jayesh V. Bhairavia, M [ J ]:-** In this OA, the applicant has sought relief for direction to the respondent authorities to give pensionary benefit to him from the date of his retirement i.e 31.05.2012 as well as benefits of National Pension System.

2. The brief facts of the case, as pleaded by the applicant is as under :-

[ i ] The applicant was initially working as a Commissioned Vendor from 01.01.1976 on temporary basis at Danapur Division of the respondent department.

[ ii ] Vide order no 235/2004, dated 26.03.2004, the applicant was appointed as "Khalasi" and he was posted at Danapur Division.

[ iii ] After his appointment i.e on 26.03.2004, the applicant became the member of National Pension System and he was provided Permanent Account No.110090379358.

[ iv ] The applicant retired from service on 31.05.2012 on superannuation. However, the applicant was not granted any benefit of pension by the respondents.

[ v ] The learned counsel for the applicant submitted that before retirement of the applicant, the respondent department demanded the Last Leave Certificate from the concerned office with a view to settle his retiral dues. Vide letter dated 25.05.2012, store clearance certificate was issued in favour of the applicant by the respondents. The concerned office, vide letter dated 29.05.2012 also issued a Railway Quarter Clearance Certificate. Thereafter the concerned department had issued service certificate cum identity card of the petitioner wherein is stated that the applicant's service period was from 28the November 2004 to 31.05.2012 and he retired from Danapur Division.

[ v ] It is submitted by the l/c for applicant that despite all the formalities has been completed but the respondents are not giving him any pensionery benefit, It is submitted that though the applicant was a permanent employee of the department he is entitled for pensionery benefits. It is further submitted that the applicant has been retired from Class-IV post and he is praying for grant of benefit of National Pension System. However, the applicant has been deprived from pensionery benefit. In this regard, the applicant had approached the office of respondents but

without any response, hence there is no other alternative remedy available except to file this OA and to seek relief as prayed for in this O.A.

3. In contra, the respondents have filed their written statement, denied the contention and submission of the applicant . On behalf of the respondents, Senior Standing Counsel Shri B.K. Choudhary submitted that the Railway Board vide their letter dated 31.12.2003 RBE No. 225/2003 issued new guidelines regarding new pension system. According to the said RBE, the Government of India (GOI) has introduced the new restructure defined as Contributory Pension System for all new entrant to Central Government Services including Railway service except Armed Forces in the first stage, replacing the existing system of Defined Benefit Pension System (old pension scheme) vide notification dated 22.12.2003. The New Pension system has come into operation with effect from 01.01.2004. As per the said notification, the system would be mandatory for all new entrants to the Central Government Service from 01.01.2004. The Railway department has accepted the new pension scheme therefore, as per the said notification, the system would be mandatory for all new entrants to the Central Government Service from 01.01.2004 including the railway department (Annexure R/1 refers).

It is further submitted that as per the policy of the respondent department the commission vendors working during 01.01.1957 to March 1992 in Departmental Catering Organisation of Danapur Division alongwith others altogether 135 persons were considered for screening vide letter dated 01.03.1993, (Annexure R/3) for the purpose of absorption in Group 'D' post. In this regard after remain successful in screening test, a seniority list of such Commercial Vendors was prepared. In the said seniority list the applicant was placed at SI No. 84. Thereafter, vide order dated 02.02.1994 issued altogether 47 persons of Danapur Division were absorbed as regular

employee as Bearer/Mate/Masalchiin in Group 'D'. The person placed upto sl. No. 67 of Danapur Division in the seniority list could be considered for absorption as regular employee. At that relevant time, the applicant was placed at Sl.No. 84 in seniority list of Danapur Division therefore, he could not be absorbed. Thereafter as per the available vacancy, a proposal dated 17.12.2003 was sent to the Chief Personnel Officer, E.C. Railway, Hajipur for necessary approval of the competent authority for absorption of commission vendors as Group 'D' in Danapur Division. In the said proposal, the name of the applicant was placed alongwith with other and eligible commission vendors. In response to it the necessary approval was accorded by the competent authority and accordingly, vide order no. 235 of 2004 dated 26.03.2004 the applicant was appointed/absorbed as khalasi in Group 'D' with effect from on 26.03.2004 alongwith other identically placed commission vendors. The applicant had accepted his appointment and joined the duty as Khalasi in Group 'D'. During his service tenure he had never objected to his appointment order dated 26.03.2004 and had not objected about his inclusion in New Pension System therefore the claim raised in this OA is misconceived and required to be rejected.

It is further submitted that on superannuation of the applicant on 31.05.2012 he was paid GIS and Leave Encashment as per the existing rule. The applicant was a commission vendor and he was not a railway employee till he has been appointed in railway service as Group 'D' employee on 26.03.2004. The applicant cannot claim any right to be included in old pension scheme.

4. In response to contention and submission of the respondents the I/c for applicant additionally submitted that the applicant was declared successful in screening test as well as in medical test long back. However, the applicant was appointed in the year 2004 as regular employee of railway department, the delay caused for his appointment was due to fault of

respondents, he ought to have been regularised in Group 'D' before 2004. Therefore he is entitled to receive all the old pension scheme benefits.

5. Heard the parties and perused the record. It emerges from the records that admittedly the applicant was appointed as regular employee "Khalasi" in Group 'D' on 26.03.2004. At that relevant time, the new pension system was applicable to all the appointee with effect from 01.01.2004, the applicant is one of it. It is noticed that the respondents had recruited/appointed the commission vendors as Group 'D' employee in accordance with the seniority list of such commission vendors. As per the vacancy made available in the year 2003 in Danapur Division, a proposal for absorption of remaining commission vendors was prepared and was sent for approval. After receipt of the approval from competent authority vide order dated 235/2004 dated 26.03.2004 the applicant was appointed as a Khalasi alongwith other seniors. Thus it is admitted fact that the applicant was appointed only on 26.03.2004 i.e after the introduction of new pension system.

6. The claim of applicant in this OA is found to be misconceived and not tenable as per the provision of pension rules. The submission of the applicant that he was remained successful in screening test before 2004 and his name was placed in seniority list before it he ought to have been considered as beneficiary under the old pension scheme. The said submission of the applicant is erroneous and cannot be accepted. It is noticed that in the prayer clause the applicant had stated that he may be granted pension benefit from his retirement date i.e 31<sup>st</sup> may 2012 alongwith benefit of national pension system. However, the I/c for applicant submitted that the main claim/grievance of the applicant with respect to non-inclusion of the applicant in old pension scheme and seeking relief for a direction for inclusion in old pension scheme in stead of new pension scheme on

the ground that the name of the applicant was declared successful in the screening test and medical tests in the year 1994 therefore he is entitled to receive the benefit of old pension scheme.

It is a well-settled and accepted principle of law that the name of a candidate appearing on a select list would not give him an indefeasible right to appointment. The date of appointment order and date of joining is crucial for applicability of provision of pension rules. The new pension scheme was made applicable with effect from 01.01.2004 by the respondents. Accordingly, any new entrant in the railway department on or after 01.01.2004 his service will be governed under the provision of new pension system. The cut off date i.e 31.01.2003 was fixed for the applicability of old pension scheme and thereafter with effect from 01.01.2004, the said new pension scheme is applicable to all employee who are appointed or regularised on or after 01.01.2004. In this regard, the Hon'ble Delhi High Court pleased to consider various orders passed by the principal Bench of this Tribunal as well as order passed by Ernakulam Bench in WP(C) 5828 of 2016 in the case of SANJAY KUMAR THAKUR AND ORS vs NORTH DELHI MUNICIPAL CORPORATION OF DELHI AND ORS decided on 01.12.2016 and pleased to held that :-

*"the courts or judicial forums cannot legislate and substitute dates. It is well-settled that the courts do not interfere with cut-off date as these are matters of discretion and within the domain of the Executive or the Legislature. The power to specify a date from which terminal or pensionary benefits, as the case may be, shall take effect is concomitant of the power of the State or Corporation to change the conditions of service unilaterally. So long as the date specified is reasonable and not wayward with reference to the requirement of fixing a point of time etc., no interference by the Court is called for. (See State of West Bengal & Ors. Vs. Ratan Behari Dey & Ors. (1993) 4 SCC 62)".*

In the present case, as stated herein above the applicant was appointed on 26.03.20114 and at that relevant time new pension system

was in force with effect from 01.01.2004, Therefore, admittedly, the service of applicant would be governed under the new pension scheme. Hence, the applicant is not entitled to be considered as beneficiary of old pension scheme. It is noticed that, the applicant is already from 31.05.2012 and his retiral dues as per the existing rules and policy had been settled by the respondents. Therefore the claim made by the applicant in this O.A is misconceived and has no merit. Accordingly, the OA is dismissed being devoid of merit. No costs.

(Jayesh V. Bhairavia ) M [ J ]

/mks/