

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/020/00037/2017
Date of Order : 09-01-2019

Between :

1. Shaik Nazeer Basha S/o Sk.Chand Basha,
Aged about 46 years, Occ. Driver-cum-Operator-D,
SHAR Fire Services, SDSC SHAR, Srihari Kota,
Nellore, Nellore District, R/o Phase-1, Qr.No.133,
SDSC SHAR, Sriharikota524124, Nellore District, A.P.
 2. C.RADHA KRISHNA S/o C. Satyam,
Aged about 43 years, Occ. Sub-Officer, SHAR
Fire Services, SDSC SHAR, Srihari Kota,
Nellore, Nellore District, R/o Phase-1, Qr.No.204,
SDSC SHAR, Sriharikota524124, Nellore District, A.P.
 3. R.SREENIVASULA REDDY S/o R. Malakonda Reddy,
Aged about 44 years, Occ. Sub-Officer, SHAR
Fire Services, SDSC SHAR, Srihari Kota,
Nellore, Nellore District, R/o Phase-1, Qr.No.141,
SDSC SHAR, Sriharikota524124, Nellore District, A.P.
 4. NEMMILI MAHAVISHNU S/o N.Chinnabba,
Aged about 35 years, Occ. Technical Officer,
Material Processing Facility/SPP,SDSC SHAR,
Srihari Kota, Nellore, Nellore District,
Qr.No.C2-17, DRDL Colony, Sullurpeta,
Nellore District, A.P.
 5. GUTTI SUBRAMANYAM S/o Gopal,
Aged about 38 years, Occ. Technical Assistant,
CRYO Instrumentation System/LSSF,SDSC SHAR,
Srihari Kota, Nellore, Nellore District,
R/o Phase-1, Qr.No.246, SDSC SHAR,
Sriharikota 524124, Nellore District, AP.
-Applicants

AND

1. The Union of India,
Rep by its Director,
Satishdhavan Space Research Centre,
SHAR, Sriharikota, SPSR Nellore District.
2. The Controller,
Satishdhavan Space Research Centre,
SHAR, Sriharikota, SPSR Nellore District.

3. The Head Personal & General Administration-I,
Satishdhavan Space Research Centre,
SHAR, Sriharikota, SPSR Nellore District.

4. The Head Personal & General Administration-II,
Satishdhavan Space Research Centre,
SHAR, Sriharikota, SPSR Nellore District.

...Respondents

Counsel for the Applicant: Mr. G. Srinivasulu Reddy

Counsel for the Respondents : Mr. V. Vinod Kumar, Sr.CGSC

CORAM :

THE HON'BLE MRS.NAINI JAYASEELAN, ADMINISTRATIVE MEMBER

(Oral Order per Hon'ble Mrs. Naini Jayaseelan, Administrative Member)

The applicants five in number applied in response to the notification dated 03.05.2002 for three posts of Driver-cum-Operator 'A' Grade and two posts of Fireman-A. The applicants were selected in the year 2003 and were issued an offer letter dated 31.12.2003 with an Annexure to the offer of appointment listing the terms and conditions of service under the relevant rules in ISRO from time to time which indicated at Sl.No.9 and the same is reproduced below :-

"9. You will be required to join the General Provident Fund (Government of India) in accordance with the rules in force, subject to the order of Government of India that may be issued from time to time."

2. The Government of India, in the meanwhile introduced a New Pension Scheme vide notification dated 22.12.2003 clearly mentioning that the new system would be applicable to all the new entrants to the Central

Govt., Services (Except Armed Forces) replacing the existing pension scheme with effect from 01.01.2004.

3. Applicants joined the Respondents organization after 01.01.2004. The applicant had earlier filed OA No.1011/2016 wherein the Tribunal had directed the Respondents to consider and dispose of the representation of the applicants dated 22.08.2016 by a reasoned and speaking order in accordance with the Rules within a period of two months from the date of receipt of a copy of the order.

4. Accordingly the Respondents passed a speaking order dated 22.11.2016 wherein the representations were examined in detail by the Competent Authority. The OM dated 22.11.2016 states that, as per the Notification No.F.No.5/7/2003-ECB&PR dt 22.12.2003, Govt., of India has introduced “the new restructured defined contribution pension system for new entrants to Central Government service, except to Armed Forces, in the first stage, replacing the existing system of defined benefit pension system, effective from 01.01.2004.” The earlier defined benefit pension system for Civilian employees which was in operation till 31.08.2003 became in effective with effect from 01.01.2004. Since the applicants joined the Central Govt., Service on 06.01.2004, they are governed under the New Pension Scheme (now National Pension Scheme) as per the existing rules in force and hence their case cannot be considered under the earlier GPF Scheme.

5. The counsel for the applicant argued that the crucial date for consideration is the date of the notification of the vacancies, not the date of joining / reporting.

6. The counsel for the respondents however stated that the claim of the applicants that GPF scheme shall be made applicable is not tenable as all new entrants from 1.1.2004 are covered under the New Pension Scheme (now National Pension Scheme) as per Rules in force. Hence the applicants' case cannot be considered for the old Pension Scheme.

7. It is an undisputed fact that the applicants joined after 01.01.2004 as per the tabular statement submitted by the learned Sr Standing Counsel for Respondents. Learned Sr Standing Counsel for the Respondents also cited order of CAT Mumbai Bench in OA No.267/2010, dated 13.07.2012 and the order of the Hon'ble High Court of Delhi at New Delhi in WP(C) 5828/2016, dated 01.12.2016 wherein the petitioners had claimed that they were covered under the CCS (Pension) Rules, 1972 and not under the New Contributory Pension Scheme and the claim is predicated on the argument in which the vacancies had arisen in the year 2002-2003 but the date of appointment was after 01.01.2004. The applicants had claimed that the date of appointment being after 1.1.2004 would be inconsequential to decide the applicability of the old or new pension schemes to the petitioners. They attributed the delay in appointment/joining to the respondents. However, the Court held that, *"the delay in issue any appointment letters was not malafide or intentional"*. The file had to be

processed and by the time the appointment letters were issued, the New Pension Scheme enforceable with effect from 1.1.2004. The Writ Petition was accordingly dismissed.

8. It has also been held by the Hon'ble Apex Court in the case of UoI Vs. P.N. Menon (AIR 1994 SC 2221). Not only in matters of revising the pensionary benefits, but even in respect of revision of scales of pay, a cut-off date on some rationale or reasonable basis, has to be fixed for extending the benefits.

9. In view of the facts that this case wherein it is undisputed that the applicants have joined Central Government Service after 01.01.2004 and in view of the judgments of the Hon'ble High Court of Delhi at New Delhi in WP (C) 5828/2016, dated 01.12.2016 in the case of Sanjay Kumar Thakur & Ors Vs. North Delhi Municipal Corporation of Delhi & Ors wherein the Respondents stated that only after completion of Administrative formalities, the appointment orders were issued and by then the revised scheme became applicable. Hence the petitioners cannot claim that the earlier Pension Scheme should be made applicable to them. Therefore it was held that there was no merit in the Writ Petition the orders passed by the Tribunal were upheld. The Co-ordinate Bench of this Tribunal ie CAT Bombay Bench, at Mumbai in OA No.267/2010, dated 13-07-2012 in the case of Shri Atul Pandey Vs. The UoI through the Secretary, M/o Defence, South Block, New Delhi & Ors has also held that, "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.”

10. In view of the above facts and circumstances and the judgment of the CAT, Bombay Bench at Mumbai in OA No. 267/2010 and the Hon’ble High Court of Delhi at New Delhi in WP (C) 5828/2016, the present OA is dismissed. No order as to costs.

(NAINI JAYASEELAN)
ADMINISTRATIVE MEMBER

Dated : 09th January, 2019.
Dictated in Open Court.

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