

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No.260/00468/2018

Reserved on : 10.04.2019
Pronounced on: 14.05.2019

CORAM:

**HON'BLE MR.GOKUL CHANDRA PATI, MEMBER (ADMN.)
HON'BLE SWARUP KUMAR MISHRA, MEMBER (JUDL.)**

Mihir Keshari Swain, aged about 36 years, Son of Bhramarbar Swain, At/Po. Lethaka, Ps. Nihalprasad, Dist. Dhenkanal, Pin-759016 at present working as JAA (Junior Administrative Assistant), Garrison Engineer, Chilka, Po. NB Chilka, Dist. Khurda, Odisha, Pin-752037.

...Applicant

By the Advocate(s)-M/s.S.K.Das, S.K.Baral, D.Mishra, A.Das,
A.Barik. S.Pati

-VERSUS-

1. Union of India represented through the Secretary, Ministry of Defence, South Block, Central Secretariat, Rajpath Marg, New Delhi, India, Pin-110011.
2. Engineer in Chief, Kashmir House, CHQ of MOD, Army, Kashmir House, New Delhi, Pin-110011.
3. Chief Engineer, Southern Command, Pune, Pin-411001.
4. Chief Engineer (NAVY), Station Road, Visakhapatnam, Pin-530004.
5. C.W.E No.2, Station Road, Visakhapatnam, Pin-530004.
6. Garrison Engineer, Chilka, Po. NB Chilka, Dist. Khurda, Pin-752037.

...Respondents

By the Advocate(s)- Mr.P.R.J.Dash

ORDER

GOKUL CHANDRA PATI, MEMBER(A)

The applicant has filed this OA seeking the following reliefs:-

"Under the circumstances, it is humbly prayed therefore that the Hon'ble Tribunal may graciously be pleased issue notice to the respondents, and after hearing the parties quash

the impugned order dated 21.4.2018 under Annexure-6 series.

And further be pleased to direct the Respondent No.3 to convert the applicant's pension Scheme from NPS to Old Pension Scheme under CCS Pension Rule 1972 and make provision of all benefits under the CCS Pension Rules, 1972 including GPF.

And pass such other order(s) or issue direction(s) as may be deemed fit and proper in the bona fide interest of justice."

2. The applicant, after being selected through an advertisement issued on 15.7.2003 and the interview held on 3.12.2003. He was issued the appointment letter vide order No. 22.12.2003 (Annexure-A/3) and he joined service on 1.1.2004. He was included under the New Pension Scheme (in short NPS) which was launched with effect from 1.1.2004. It is submitted in the OA that although the advertisement and the appointment order to him was issued under the old pension scheme, but he has been included under the NPS, in violation of the settled law as decided in a number of judgments.

3. The applicant submitted a representation dated 6.12.2017 (Annexure-A/5) to the authorities for including him under the old pension scheme. The respondent no. 4 forwarded the representation to the office of the respondent no.3 who rejected the proposal vide order dated 21.4.2018 (Annexure-A/6 series), which is impugned in this OA.

4. The grounds taken in the OA are that the NPS scheme was launched vide the notification dated 22.12.2003 and it has to be implemented prospectively and not retrospectively. It was mentioned that in the case of the applicant, the advertisement was

issued on 15.7.2003 and the process of recruitment was completed by the time NPS came into force. Hence, the applicant cannot be covered under the NPS, for which, the impugned order dated 21.4.2018 at Annexure-A/6 is illegal and unsustainable.

5. The respondents have filed a short reply in the matter, stating that the applicant joined on 1.1.2004 when the NPS was in force and hence, although his appointment order was issued earlier, he cannot be brought under the old pension scheme. Accordingly, the request of the applicant was duly considered and rejected vide order dated 21.4.2018.

6. Learned counsels for both the parties were heard. The applicant's counsel, in addition to the points mentioned in the OA, has also relied on the judgment dated 27.3.2017 of Hon'ble Delhi High Court in the case of Inspector Rajendra Singh and others vs. Union of India and others, which was stated to have been confirmed by Hon'ble Apex Court and also the judgment of Hon'ble Apex Court in the case of K. Manjushree etc. vs. State of A.P. and another reported in AIR 2008 Supreme Court 1470.

7. Learned counsel for the respondents, on the other hand, submitted that the applicant has approached the Tribunal after delay and hence, the OA is barred by limitation, since though he was covered under NPS since 1.1.2004, he failed to approach the Tribunal within time stipulated under section 21 of the Administrative Tribunals Act, 1985. Learned counsel for the respondents also reiterated the stand taken in the short reply submitted by the respondents. In reply to the issue of delay, the

applicant's counsel has pointed out the para 36 to 39 of the judgment dated 27.3.2017 of Hon'ble Delhi High Court and argued that the OA will not be barred by limitation.

8. Before we proceed further, the question of delay raised by learned counsel for the respondents needs to be addressed first. It is a fact that the applicant has approached the authorities for changing over to old pension scheme through his representation dated 6.12.2017 (Annexure-A/5) although he was covered under NPS from his date of joining on 1.1.2004. Similar delay was there in the case of Inspector Rajendra Singh (supra) decided by Hon'ble Delhi High Court. In that case, Hon'ble Delhi High Court has held on the issue of delay as under:-

"38. In this case, the petitioners have not retired from service. After persons similarly circumstanced, if not identically circumstanced, as the petitioners were given the benefit of the Old Pension Scheme, may be, pursuant to orders of this Court, the Petitioners approached this Court for relief. Rejection of the writ petition only on the ground of delay, would perpetrate discrimination between persons similarly circumstanced.

39. It is well settled that relief under Article 226 of the Constitution of India is discretionary. When there is acquiescence and laches and delay in approaching this Court, discretionary relief might be declined. However, delay is no bar to entertaining a writ petition. If entertaining a delayed writ petition entails the consequence of unsettling things already settled, relief may be declined. However, flagrant discrimination cannot be allowed to continue, only because of delay. Illegality must be redressed. In this case grant of relief would not result in unsettling things already settled. We are not inclined to reject the writ petition on the ground of delay."

9. Learned counsel for the respondents have submitted the written note of submission highlighting the question of delay in this case since the applicant has approached the Tribunal in 2018

although the cause of action arose on 1.1.2004. It is further stated in the written note that there is no illegality meted out to the applicant who, was governed by the rules applicable as on the date of joining. It is also pointed out that the facts in the case before Hon'ble Delhi High Court were different since the delay in appointment occurred although the advertisement was issued in 2002. No such delay has taken place in this OA.

10. In view of the specific provisions in section of 21 of the Administrative Tribunals Act, 1985, it is not possible for this Tribunal to exercise the discretion in respect of delay in absence of satisfactory reasons for condoning such delay in a separate application for consideration of the Tribunal since the applicant remained silent till he submitted representation dated 06.12.2017 (Annexure-A/5) although he was covered under the NPS from his date of joining on 01.01.2004 and is participating under the NPS. In this OA, no separate application for condonation of delay has been filed as required under Section 21 of the A.T. Act, 1985. Hence, we are of the view that this OA is barred on the ground of delay and limitation as no discretion is available to this Tribunal in the matter.

11. In view of the above, the OA is dismissed as it is barred by limitation under section 21 of the Administrative Tribunals Act, 1985. No cost.

(SWARUP KUMAR MISHRA)
MEMBER(JUDL.)

(GOKUL CHANDRA PATI)
MEMBER(ADMN.)

