
(2022) 02 GAU CK 0011

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 7369 Of 2021

Sanjay Kumar And Anr

APPELLANT

Vs

Union Of India And 3 Ors

RESPONDENT

Date of Decision : 04-02-2022

Acts Referred:

Citation : (2022) 02 GAU CK 0011

Hon'ble Judges : Sudhanshu Dhulia, CJ;Soumitra Saikia, J

Bench : Division Bench

Advocate : M Chanda, S. Nath, S. C. Keyal

Final Decision : Allowed

Judgement

1. This writ petition has been preferred by the petitioners, namely, 1. Shri Sanjay Kumar and 2. Sri Hardewa Ram challenging the order dated

20.12.2019 passed by the Central Administrative Tribunal, Guwahati Bench, Guwahati in O.A. No. 041/00218/2018 whereby their original application

filed before the Central Administrative Tribunal, Guwahati Bench, Guwahati was dismissed.

2. The petitioners are working as the Superintendent Group of Central Goods and Service Tax and posted at Dibrugarh and Agartala

respectively. By way of advertisement dated 25-31 January, 2003 issued by the Staff Selection Commission, a Combined Graduate Level

(Preliminary) Examination- 2003 for selection of candidates for recruitment to the post of Inspector of Central Excise/Income Tax, Preventive Officer

in Customs etc. along with other posts were advertised. The petitioners applied for in response to the said advertisement. The selection was conducted

in three stages, namely, preliminary examination, main examination and

interview. The petitioner No. 1 appeared in the examination under Roll No.

2018181 and the petitioner No. 2 appeared in the examination under Roll No. 1728631. The results of the examinations were published in the

â??Employment Newsâ? dated 15-21 January, 2005. The names of the petitioners appeared at Serial No. 185 and 219 respectively under the

category of Inspector of Central Excise. Thereafter, on completion of required procedural formalities and Police verification etc., the petitioner No. 1

joined his service on 05.08.2005 and the petitioner No. 2 joined his service 24.08.2005 to the posts of Inspector of Central Excise. The petitioners

were subsequently promoted to the posts of Superintendent of Central Excise w.e.f. 16.03.2017.

3. When the selection process was initiated, all the employees were covered under CCS (Pension) Rules, 1972 as per the General Provident Fund

(GPF) Scheme in respect of their Pension which was in force till 31.12.2003. Subsequently, the pension Rule was substituted by the Government of

India by a â??New Defined Contributory Pension Scheme (NPS)â?? w.e.f. 01.01.2004.

4. The grievance of the petitioners are that they were not aware of the Office Memorandum dated 29.12.2003 whereby the Defined Contributory

Pension Scheme was introduced. They believed in good faith that the said New Pension Scheme will be a better Pension Scheme for Welfare of the

employees. Also since, the petitioners were unemployed at the relevant point in time, they were in no position to bargain, therefore, they accepted the

offer of appointment since no other alternative option was available to them. Pursuant to their appointment in the service, the petitioners approached

the respondent authorities praying for inclusion of their names in the GPF Scheme and CCS (Pension) Rules, 1972 instead of under the New Pension

Scheme Pension Scheme. But their prayers were not considered and it was maintained that it is only the New Pension Scheme which will apply in

their cases as they had joined service after 01.01.2004. The petitioners also submitted detailed representations on 30.08.2017, however, the respondent

No. 3, vide impugned letter dated 11.12.2017 rejected the claims of the petitioners and informed them that as per the standing instructions of the

Government, consequent upon the introduction of the New Pension Scheme, no Government servant who joined services on or after 01.01.2004 will

be eligible to get the benefit of GPF under CCS (Pension) Rules, 1972. Being aggrieved, the petitioners approached the Central Administrative

Tribunal, Guwahati Bench, Guwahati by filing their O.A. No. 041/00218/2018 praying for directions from the Central Administrative Tribunal,

Guwahati Bench, Guwahati. It was urged before the Tribunal that since they were recruited against the vacancy year/recruitment year of 2003, their

appointments made pursuant to 01.01.2004 will not come in the way of they being included under and being given the benefit of GPF under CCS

(Pension) Rules, 1972 which was in force till 31.12.2003. The learned Central Administrative Tribunal by impugned order dated 20.12.2019 in O.A.

No. 041/00218/2018 rejected the prayers and dismissed the O.A. Being aggrieved the present writ petition has been filed.

5. The primary challenge by the petitioners before the Central Administrative Tribunal, Guwahati was that the advertisement pertaining to the said

recruitment relates to vacancies which arose for the year, 2003. The entire recruitment process took about two years time and pursuant thereto the

petitioners were appointed belatedly in the year 2005 although they were recruitees against the vacancies occurring for the year 2003. Consequently,

they were all eligible to get the benefit under the law/Rule existing as in 2003 and, as such, they are entitled to get the benefits of General Provident

Fund under CCS (Pension) Rules, 1972. The New Pension Scheme which came into effect w.e.f. 01.01.2004 are not applicable to them. The

petitioners further contended that the period of two years undertaken by the respondents for completing the selection process, cannot be attributed to

the petitioners. The petitioners urged that once the vacancies are declared and the process of selection continues then any delay in respect of the

selection process cannot be attributed to the recruitees like the petitioners. Therefore, as their recruitment was in respect of vacancies which arose in

the year, 2003, notwithstanding that their selection and appointments were made in the year 2005 by the respondent authorities, they would still be

entitled to benefit of GPF under CCS (Pension) Rules, 1972 which was available at the relevant point in time i.e. 2003 during which the vacancies

arose and the selection process was initiated. In support of their contentions, the petitioners relied upon several Judgments of the Delhi High Court and

a Judgment of Uttarakhand High Court as well as an order passed by the Central Administrative Tribunal, Kerala Bench in a matter where similar

issues were decided. The petitioners have also referred to an Office Memorandum dated 13.01.2016 issued by the Director General of Border

Security Force whereby Sri Parma Nand Yadav & 125 others who were petitioners in WP(C) No. 3834/2013 (Parma Nand Yadav & Ors. Vs-

Union of India & Ors.) before the Delhi High Court, were permitted to be converted as members of the Old Pension Scheme which was in force till

31.12.2003 and the NPS Corpus which were earlier subscribed was transferred to GPF accounts of each individuals subject to the condition that they

will not be entitled for any back wages or seniority etc. This Office Memorandum was issued in pursuance to the order dated 12.02.2015 passed in

WP(C) No. 3834/2013 (Parma Nand Yadav & Ors. Vs- Union of India & Ors.) wherein it was urged by the petitioners therein that since they

were recruited in the year 2003 as Inspectors, but unlike other similarly situated candidates they could not join within the year 2003 because of delay in

official procedure. The Delhi High Court vide order dated 12.02.2015 issued Mandamus directing the respondent/Union of India to treat the petitioners

as members of the Pension Scheme which was in vogue till December 31, 2003 and not to treat them as members of the New Contributory Fund

Scheme.

6. The respondents strongly objected to the submissions made by the learned counsel for the petitioner. The learned counsel for the respondent

submits that the cases of the recruitees/appointees in the Judgments of the Delhi High Court referred to by the petitioners are distinguishable on facts.

The learned counsel for the respondents submits that in most of these matters, the selection process was initiated in the year 2003 and which was

virtually complete towards the end of 2003 and therefore, under these circumstances the issuance of appointment letters were delayed by few months

because of administrative exigencies or medical reports not being received in time. In these circumstances, the Delhi High Court and the other High

Courts of the country passed orders holding that appointees would be covered under the old pension scheme. However, in the facts of the present

case, although the examination was conducted in May, 2003, the results were declared in May, 2004. Therefore, before declaration of the results,

obviously no appointment orders could have been issued. It is submitted that the appointment orders were finally issued in the year 2005. The learned

counsel submits that the New Pension Policy came into force w.e.f. 01.01.2004. Since the appointments of the petitioners are in the year 2005 they

would be covered under the Defined Contribution Pension Scheme which come into effect from 01.01.2004 as per Department of Expenditure's

O.M. No. 1(7)(2)/2003/TA/616 dated 29.12.2003. The petitioners can be considered to be the members of the service only from the date of their

appointment which were issued in 2005. Prior to this, they cannot be regulated by the service Rules including the Rules of the Pension. In support of

his contention, the learned counsel for the respondent relies upon the Judgments of the Allahabad High Court rendered in Manoj Kumar Singh vs-

State of U.P., reported in 2020 (0) Supreme (All) 983 and the Satyesh Kr. Mishra vs-State of U.P., reported in 2016 (0) Supreme (All) 663.

7. We have heard the learned counsels for the parties in extenso and have carefully perused the pleadings on record.

8. The short case projected by the petitioners is that they are entitled to the benefit of being included under GPF Scheme and CCS (Pension) Rules,

1972 in view of the fact that the recruitment process in which they participated and were ultimately selected and appointed pertain to the vacancies

which arose in the year 2003. Notwithstanding the delay in culmination of the selection process and the appointment of the petitioners being granted in

the year 2005, since the vacancies pertain to the year 2003 during which period the GPF Scheme and CCS (Pension) Rules, 1972 in force, the

petitioners are entitled to be granted the benefit of the same and are not covered under the New Pension Scheme.

9. There is no dispute in the Bar that the selection process was initiated in the year 2003, completed in the year 2004 and finally the appointment

orders were issued in the year 2005. Since at the time of initiation of the selection process, the old pension Rules were in force and the vacancies

admittedly relate to year 2003. Whether the petitioners can claim to be covered under the Old Pensions Rules notwithstanding the delay in issuance of

Appointment orders is the issue to be decided.

10. In order to decide the question presented before us in the present proceedings, it would be necessary to examine the various judgments of the

Central Administrative Tribunals of other States as well as judgments rendered by different High Courts of the country which have been pressed into

service by the counsels in support of their contentions.

11. In *Sheeba B and Anr., Vs- Union of India*, the Central Administrative Tribunal, Ernakulam Bench, Ernakulam by placing reliance on an earlier order passed by the said Tribunal held that the petitioners therein are eligible to be included in the CCS (Pension) Rules, 1972 and the respondents were directed to take necessary steps towards such inclusion. The facts in that case as revealed from the order dated 15.02.2016 are that the applicants were directly recruited as Postal Assistants appointed in the year 2005 against the vacancies which arose in the year 2002. They were aggrieved by not including them in the statutory pension scheme under the CCS (Pension) Rules, by notionally pre-dating their appointment from the date of occurrence of a vacancy. According to the petitioners, therein, the delay had occurred in finalizing for the said posts which was due to the fault of the respondents as the vacancies had arisen in the year 2002. Therefore, the petitioners therein sought relief from the Central Administrative Tribunal, Ernakulam to direct the respondents to treat the petitioners to have been included in the statutory pension scheme under the CCS (Pension) Rules and to consider to have been appointed as Postal Assistants from the date of occurrence of vacancies in the year 2002 for the limited purpose of grant of pension under CCS (Pension) Rules only. The Central Administrative Tribunal, Ernakulam by placing the reliance on an earlier order passed by the Tribunal vide order dated 28.06.2013 passed in O.A. No. 724/2012 allowed the application directing that the petitioners therein to be deemed to have been appointed from the date when the vacancies arose and that they shall be included in CCS (Pension) Rules, 1972. Consequently directions to that effect were issued to the respondent authorities.

12. Similarly by Judgment dated 26.06.2014, a Division Bench of the Uttarakhand High Court upheld Judgment dated 20th November, 2012 passed by the learned Single Judge of the Court. The issue involved therein was that the appellants/petitioners therein had applied for the post of the Assistant Teachers in Government Primary Schools and were interviewed on 28.09.2005 and were selected vide order dated 29.09.2005. Thereafter, the Government issued Government order dated 25.10.2005 making provision therein that the Government servants would not be entitled for regular pension therein, but would only be entitled for contributory pension scheme

w.e.f. 01.10.2005. The Uttarakhand High Court held that when the petitioners applied for the post, old pension scheme was in existence, therefore, the petitioners had every reasonable expectation that they would be governed by the service conditions prevailing on the date the posts were advertised and recruitment process had commenced. The High Court held that the service conditions prevailing on the date the posts were advertised and recruitment process which had commenced, cannot be permitted to be altered to the disadvantage of the recruitees and the Government order dated 25.10.2005 (whereby the Government held that the petitioners therein would be entitled for contributory pension scheme w.e.f. 01.10.2005) cannot be made applicable retrospectively for the persons who had applied for the posts prior to 25.10.2005. Accordingly, a Division Bench of the Uttarakhand High Court upheld and affirmed the views of the learned Single Judge.

13. Before the Central Administrative Tribunal, Guwahati, the order of the Central Administrative Tribunal, Ernakulam and the judgment of the Uttarakhand High Court were relied upon petitioners as the applicants. However, in this writ petition besides these two judgments, several other judgments passed by various High Courts have also been relied upon by the judgments as discussed are also relied upon.

14. In *Vikash Kumar â?Vs- Union of India*, the petitioners therein had applied for the posts pursuant to advertisement issued on 21st June, 2003 by the Staff Selection Commission for filling up the posts of Sub-Inspector (SIs) in the Police organization. The petitioners therein had cleared written examination as well as the physical endurance test, for which they had appeared on 21st November, 2003. They appeared for medical examination, thereafter, their final results were declared on 22nd May, 2004 and their appointments were made vide appointments order dated 5th August, 2004. A Division Bench of the Delhi High Court vide Judgment dated 13.01.2020 relying upon an earlier judgment of the Court passed in WP(C) No.

3827/2012 (*Naveen Kumar Jha â?Vs- Union of India*) held that the candidate/recruitee would be covered by the Old Pension Scheme i.e. the CCS (Pension) Rules, 1972. Similarly by order dated 12th February, 2015 passed in WP(C) No. 3834/2013 (*Parmanand Yadav â?Vs- Union of India*) by the Delhi High Court, the petitioners therein who were Sub-Inspectors of the

Border Security Force were held to have been covered by the earlier Old Pension Scheme as their letters of appointments were issued beyond 1st January, 2004. The Delhi High Court had relied upon the orders passed in W.P(C) No. 2810/2016 (Inspector Rajendra Singh â?Vs- Union of India) wherein similar reliefs were granted by the Delhi Court. Reference was also made to another order dated 12th February, 2019 passed in WP(C) No. 6680/2017 (Union of India and Ors. Vs- Tanaka Ram and Ors.) whereby the prayers of the petitioners therein were also allowed that they should be covered by the Old Pension Scheme or the CCS (Pension) Rules, 1972.

The Delhi High Court held that the order passed in Tanaka Ram (supra) was affirmed by the Supreme Court by dismissal of the SLP preferred by the Union of India vide order dated 2nd September, 2019 being SLP (CC) Diary No. 25228/2019 (Union of India and Ors. Vs- Tanaka Ram and Ors.). A reference was also made to WP(C) No. 1358/2017 (Shyam Kumar Choudhury and Ors. â?Vs- Union of India and Ors.) wherein similar reliefs were granted in respect of the certain Assistant Commandants in the CRPF, who had successfully cleared the examinations of 2003 but were offered letters of appointments after 2004. The said order has also been affirmed by the Apex Court vide order dated 27th November, 2019 passed in SLP(C) No. 31539/2019 filed by the Union of India as the SLP preferred by the Union of India was dismissed. In view of all these case laws rendered by the Delhi High Court itself, the Delhi High Court vide order dated 13.01.2020 had allowed the said writ petition giving the benefits to the petitioners to be considered the Old Pension Scheme i.e. CCS (Pension) Rules, 1972.

15. The petitioners have also enclosed a copy of the order dated 24.11.2020 passed by the Apex Court dismissing the Review Petition filed by the Union of India in Shyam Kumar Choudhury (s). The review order reads as under:-

â??Application for hearing of the review petition in open Court is rejected.

There is an inordinate delay of 347 days in filing the review petition for which no satisfactory explanation is given.

Even otherwise, having gone through the review petition and the connected papers, we find no merit in the review petition.

The review petition is dismissed on the ground of delay as well as on meritsâ??.

16. In another writ petition being WP(C) No. 13129/2019 (Niraj Kumar Singh and Ors. â?Vs- Union of India and Ors.) the Delhi High Court vide

order dated 13.12.2019 had also given similar reliefs to the petitioners by relying upon the Judgments rendered in Shyam Kumar Choudhury (supra)

and Tanaka Ram (Supra) subsequently affirmed by the Supreme Court. In SI/MIN M.R. Gurjar and Ors. vs- Union of India and Ors. (WP(C)

No. 8208/2020) and other batches of writ petitions, a Division Bench of the Delhi High Court vide Order dated 15th January, 2021 by similarly

referring to the earlier orders passed by the Delhi High Court, more particularly, the judgment of the Delhi High Court, namely, Shyam Kumar

Choudhury(supra) and Tanaka Ram (supra) passed by the Delhi High Court allowed these batches of writ petitions. The Delhi High Court held that

the petitioners therein were covered under the Old Pension Scheme as all the petitioners had applied pursuant to Notification dated September, 2003

and June 2003 for the posts of Constable/GD in the Central Armed Police Force and Sub-Inspectors and had qualified in the said examination of 2003.

17. We have carefully perused the judgments rendered by the Delhi High Court as well as Central Administrative Tribunal, Ernakulam.

18. The cases of the recruitees/the appointees in the writ petitions before the Delhi High Court, which are pressed into service by the present

proceedings, had all applied for the selection process which was initiated in the year 2003. The process for selection including written test, interview

and medical examination etc., were largely concluded in the year 2003. However, in spite of that, the appointment letters were issued in the year 2004

and by which time the New Pension Scheme have come into force. The Delhi High Court was of the view that since the process of selection had

been initiated in the year 2003 and the appointees had been selected and their selections were concluded in the year 2003 itself but because of various

reasons the appointment orders were belatedly issued in the year 2004, such delay cannot be attributed to the petitioners and, therefore, the Delhi High

court came to the conclusion that the prayers made in those writ petitions therein that the recruitees/appointees are governed by the Old Pension

Scheme and not by the New Pension Scheme were allowed and consequential directions were issued to the respondents to pass necessary orders for

inclusion of the names of the appointees under the Old Pension Scheme.

19. In the several judgments referred to by the petitioners of the Delhi High Court as well as by the Uttarakhand High Court, it is seen that the

consistent view of the High Courts in the said matters is that where the process of recruitment have been initiated in the year 2003 and the

examinations and selections were completed in the year 2003 merely because the appointment orders were issued subsequently in the year 2004 or

later, such delay not being attributable to the appointees or the recruitees, the benefit of the Old Pension Scheme which was replaced by the New

Pension Scheme from 01.01.2004 cannot be denied to such recruitees/appointees who had applied for, were duly scrutinized and were declared

successful in the year 2003.

20. In the facts of the present case also, it is evident that in pursuance to the advertisement dated 25th-31st January, 2003, the petitioners had applied

for being selected in the post which were advertised. The combined preliminary examination was held on 11.05.2003 and the mains examination was

conducted from 26th to 28th September, 2003, whereas the results were declared on 27.12.2004 and the appointment orders were issued on

12.07.2005. It is seen that while the entire selection process was initiated in the year 2003, and the results were declared in the year 2004. It took

about nineteen months from May, 2003 to December, 2004 to declare the Final selection lists and only thereafter, the appointment orders were issued.

What is noticed is that before the Central Administrative Tribunal, Guwahati no written statement appears to have been filed on behalf of the

Union/respondents as there is no statement made before us to that effect nor is there any reference to that found in the Central Administrative

Tribunal, Guwahati's order. What was submitted by the respondents were parawise comments before the Central Administrative Tribunal,

Guwahati as is found recorded in the impugned order. In the parawise comments, relevant extract of which is found in the recital of Tribunal's

order, it is seen that the respondents only pointed out that as per Office Memorandum under No. II(31)20/ET-II/2005 dated 12.07.2005, the applicants

have been particularly informed about the terms and conditions of the appointment that on their appointment to service on or before 01.01.2004, they

would be covered under the Defined Contribution Pension Scheme as per Department of Expenditure's O.M. No. 1(7)(2)/2003/TA/616 dated

29.12.2003. There is no averment in respect of the delay that had occurred in finalization of the recruitment process and the appointments issued

thereafter. Whatever be the reason for the delay by the respondent authorities, in the absence of the adequate explanation, it cannot be attributed to the petitioners.

21. In *Manoj Kumar Singh (supra)*, referred by the learned counsel for the respondents, it is seen that the Allahabad High Court held that the date of entry into service would otherwise determine the applicability of pensions Rules. For any delay in conclusion of the selection, the previous Pension Rules would not get attracted in view of the express stipulation in the statutory Rules itself. That apart since no protest was made by the petitioners during the last fourteen years, the petitioners have acquiesced to the New Pension Scheme and they will not be covered by the Old Pension Scheme when there is no challenge made to the statutory Rules itself. The Allahabad High Court accordingly, therefore, dismissed the claims raised by the petitioners therein.

22. In *Satyesh Kumar Mishra â"Vs- State of U.P.*, the contention of the petitioners therein that they were entitled to get the benefit of the Old Pension Scheme as they got selected in the year 2003, were not accepted as date of entry into service is required to be taken into account and not the year when they were declared successful. Accordingly, the Allahabad High Court dismissed their writ petition rejecting the contentions of the petitioners therein that they were covered under the Old Pension Scheme.

23. In the facts of the present case as there is no dispute that when the advertisement was issued in the year 2003 and the selection process had commenced, the Old Pension Scheme was in force. The Judgments of the Delhi High Court and the Uttarakhand High Court were rendered on facts which are similar to the facts in the present case. The petitioners had also agitated their grievances by their representation dated 30.08.2017 before the respondent authorities. In the detailed representation preferred before the authorities the petitioners referred to the orders passed by the Uttarakhand High Court in *State of Uttarakhand & Ors. â"Vs- Balwant Singh & Ors.*, and by the Delhi High Court in *Parma Nand Yadav & Ors. â"Vs- Union of India & Ors.*, as well as order passed by the Central Administrative Tribunal, Ernakulam Bench and the Central Administrative Tribunal, Jabalpur Bench. The said representation however came to be rejected by communication dated 11th December, 2017. Pursuant to which the

petitioners approached the Central Administrative Tribunal, Gauhati Bench.

24. As discussed above, the respondent authorities have not explained the delay of about 19(nineteen) months which had occurred from May, 2003 to

December, 2004 for completion of the selection process and declaration of results. That apart, the appointment orders of the petitioners came to be

finally issued on 12.07.2005. Such delay which had occurred during the selection process as well as the delay in issuing the appointment orders cannot

be attributed to the petitioners in the absence of any explanation forthcoming from the respondent authorities. The Delhi High Court had rendered

several judgments allowing writ petitions where persons similarly situated as the present petitioners were granted the benefit of the Old Pension Rules,

two of which, namely, Tanaka Ram (supra) and Shyam Kumar Choudhury (supra) have attained finality in view of the appeals preferred by the Union

of India having been dismissed by the Apex Court. Under the circumstances, this Court is persuaded to accept the views expressed in the judgments

rendered by the Delhi High Court and Uttarakhand High Court. Accordingly, it is held that the cases of the petitioners being similarly situated persons

ought to be covered under the Old Pension Scheme of 2003. For reasons held as aforementioned, we are not persuaded to accept the views

expressed by the Allahabad High Court in Manoj Kumar Singh (supra) and Satyesh Kr. Mishra (supra) which are relied upon by the respondents as

the same are not applicable to the facts of the case.

25. Accordingly, this writ petition is allowed by issuing a Mandamus to the respondents to treat the petitioners as members of the Old Pension Scheme

which was in force till December 31, 2003.

26. The respondent authorities are directed to pass appropriate orders granting the benefit of the Old Pension Scheme to the petitioners as have been

done in the case of other recruitments initiated in the year 2003 in respect of other departments like the BSF, SSB, ITBP etc., by the Government of

India. Consequential orders necessary are directed to be passed by the respondent authorities in respect of the petitioners. Needless to say that the

order passed in the writ petition will only be applicable for grant of pensionary benefits under the Old Pension Scheme, but no claims will be

entertained as regards the seniority and any arrear salary of the petitioners.

27. Writ petition is allowed and disposed of in terms of the above. No order as to

cost.