

(2024) 08 CAT CK 0013
In the Central Administrative Tribunal
Case No : Original Application No. 953 Of 2024

Sujit Kumar Singh & Ors

APPELLANT

Vs

ADG/ADM, Directorate General Of Quality Assurance,
Department Of Defence Production (DGQA/ADM).
Government Of India, Ministry Of Defence, Defence Office
Complex, Ist Floor, B-Block, Africa Avenue, New Delhi & Ors.

RESPONDENT

Date of Decision : 30-08-2024

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2024) 08 CAT CK 0013

Hon'ble Judges : Om Prakash VII, Member (J); Mohan Pyare, Member (A)

Bench : Division Bench

Advocate : N.K. Upadhyay, Udai Chandani, Manoj Kumar Sharma

Final Decision : Dismissed

Judgement

Mohan Pyare, Member (A)

1. Present Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:

"A) To set aside the orders dated 14.3.2024 passed by respondent no.2 as well as the order dated 05.04.2024 passed by respondent no.6 and the order dated 18.08.2023 passed by respondent no.4.

B) To direct the respondent department to consider the claim of the applicants relating to change from National Pension System (NPS) to Central Civil Services (Pension) Rules, 1972, CCS (Pension) Rules, 1972 within a stipulated period.

C) To direct the respondent department to provide all the respective benefits which have been declined to the applicants due to non-implementation of the CCS Pension Rules, 1972 with retrospective effect within a stipulated period.

D) To issue an order or direction may deem fit and proper in the facts and

circumstances of the case.

E) To award the cost to the applicant.”

2. The brief facts of this case are that the applicant no.1 was appointed on 11.05.2005 in connection with the advertisement published in between 18-24/09/2004 and at present the applicant no.1 is rendering services as Upper Division Clerk. Similarly situated applicant nos. 2 and 3 were appointed on 05.01.2005 and 02.04.2005 respectively. All the applicants are physically handicapped and were appointed against the vacancy reserved for physically handicapped persons. An Office Memorandum was issued by DoPT on 03.03.2023 whereby the coverage under the CCS Rules in place of National Pension System of the Central Government Employees who are recruited against the posts/ vacancies advertised/ notified for recruitment on or after 01.01.2004 requesting for extending the benefit of the pension scheme under CCS (Pension) Rules, 1972 on the ground that their appointment was made against the posts/ vacancies advertised/ notified for recruitment prior to notification of NPS and it was further mentioned in the Office Memorandum that the respondent department also issued an order directing the respective employees of their department to pursue their application form. On 22.03.2023, applicant no.1 preferred an application before the Controller in which he mentioned that he was appointed as LDC (PB) VH on 11.05.2005 and the said appointment was made against the post or vacancy which was notified for recruitment/ appointment vide HQDGQA New Delhi later which was prior to the date of notification for NPS i.e. 22.12.2003 and therefore, applicant no.1 submitted his option as per para 4 of the DoPT OM for shifting from NPS to CCS (Pension) Rules, 1972. On 06.10.2023, the applicant no.1 was informed by a letter forwarded by the Administrative Officer that his request was not approved by the HOE for not satisfying the eligibility criteria. The applicant again represented before the Controller with documents in support of his claim but the same was rejected on 07.12.2023. Applicant No.1 again preferred an application before respondent no.1 on 12.02.2024. The claim of applicant no.1 was rejected on 14.03.2024 by the Deputy Director. Applicant no.2 and 3 also made similar representations which were rejected by respondent no.1 on 06.04.2024 and 18.08.2023 respectively.

3. We have heard learned counsel appearing for the parties at the stage of admission itself.

4. Submission of learned counsel for the applicants is that it is clearly provided in the office memorandum dated 03.03.2023 that in “all cases where the Central Government Civil Employees have been appointed against a post of vacancy which was advertised/ notified for recruitment/ appointment prior to the date of notification for National Pension System i.e. 22.12.2003 and is covered under the National Pension System on joining the service on or after 01.01.2004 may be given a one time option to be covered under the CCS (Pension) Rules, 1972 and in the case of the applicants, the advertisement/ notification issued by Ministry of

Defence is of 20.05.2003 on the basis of which they have been granted appointment and therefore, their right cannot be foregone or curtailed by the respondent department by interpreting the office memorandum dated 03.03.2023 as per their convenience. He further argues that similarly situated employees who have been granted appointment on the basis of the advertisement/notification issued by the Ministry of Defence have been granted the benefit of the CCS (Pension) Rules, 1972 but to the reason best known to the department, the right of the applicants have been denied.

5. Submission of learned counsel for the respondents is that the date of intimation of a vacancy within the department cannot be construed as notification for employment. He submits that the date of notification and advertisement for the post of LDC against which the applicants applied were 16.07.2004 and 18-24.09.2004 respectively which is subsequent to the date of notification of NPS i.e. 22.12.2003. Thus, the applicants are not eligible to be covered under the CCS (Pension) Rules, 1972. Thus, he argued that the O.A. lacks merit and should be dismissed as such.

6. We have considered the rival submissions of learned counsel appearing for the parties, and perused the entire documents on record.

7. The DoPT Office Memorandum dated 03.03.2023 stipulates as under:

The matter has been examined in consultation with the Department of Financial Services, Department of Personnel & Training, Department of Expenditure and Department of Legal Affairs in the light of the various representations/references and decisions of the Courts in this regard. It has now been decided that, in all cases where the Central Government civil employee has been appointed against a post or vacancy which was advertised/notified for recruitment/appointment, prior to the date of notification for National Pension System i.e. 22.12.2003 and is covered under the National Pension System on joining service on or after 01.01.2004, may be given a one-time option to be covered under the CCS(Pension) Rules, 1972 (now 2021). This option may be exercised by the concerned Government servants latest by 31.08.2023.

8. It is admitted that the applicants were appointed in connection with the advertisement published in between 18-24/09/2004. The date of identification of the vacancies for a particular category should not be equated by those belonging to that category with the actual date of notification for the general recruitment. The date of notification for the recruitment in this case is 16.07.2004 which has not been disputed. Only the number of vacancies for filling up the posts reserved for Physically Handicapped Persons has been identified on a date prior to the date of notification for National Pension System (22.12.2003) while the actual date of notification of the posts of LDC against which the applicants are recruited is later than 22.12.2003. Thus, the applicants cannot claim to be eligible for making the option for being covered by the CCS (Pension) Rules, 1972 as per the DoPT Office Memorandum dated 03.03.2023.

9. In view of the above, the O.A. is liable to be dismissed for want of merit and is, accordingly, dismissed at the admission stage itself. All associated M.A.s also stand disposed of. No order as to costs.