



GAHC010194712020

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/158/2021

CT/GD MUKESH CHANDRA BORA,
FORCE NO. 045130025, S/O LATE DURLAV CHANDRA BORA, R/O VILL.
DERIGAON, P.O. PATIAPAM, DIST. NAGAON, ASSAM, PIN 782426

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF
HOME AFFAIRS CENTRAL SECRETARIAT, P.O. NEW DELHI 110001

2:THE DIRECTOR GENERAL

CENTRAL RESERVE POLICE FORCE
CENTRAL GOVT. OFFICE COMPLEX
NEW DELHI 110001

3:THE INSPECTOR GENERAL OF POLICE

NORTH EASTERN SECTOR CENTRAL RESERVE POLICE FORCE
SHILLONG
MEGHALAYA
PIN 793001

4:THE DEPUTY INSPECTOR GENERAL OF POLICE

GROUP CENTRE
CENTRAL RESERVE POLICE FORCE
DAYAPUR
SILCHAR
ASSAM
PIN 788030

5:THE COMMANDANT



95 BATTALION
CENTRAL RESERVE POLICE FORCE
LOCATED AT VARANASI
UTTAR PRADESH
PIN 212011

6:THE COMMANDANT

60 BATTALION
CENTRAL RESERVE POLICE FORCE
PRESENTLY LOCATED AT CHHATARPUR JHARKHAND
PIN 82211

Advocate for the Petitioner : MR. R MAZUMDAR

Advocate for the Respondent : ASSTT.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 06-12-2022

1. Heard Mr. R. Mazumdar, the learned counsel appearing on behalf of the petitioner and Mr. K. K. Parasar, the learned counsel appearing on behalf of the Respondent Nos.1, 2, 3, 4, 5 and 6.
2. The issue involved in the instant writ petition is as to whether the petitioner who was provisionally selected on 18.11.2003 subject to condoning the deficiency in height by the competent authority of 1.5 cm and upon being condoned on 05.01.2004 and subsequently, appointed on 16.02.2004 would be entitled to the Old Pension Scheme or the new pension scheme. For appreciating the issue involved, it is relevant to take note of the facts involved in the instant case.
3. The father of the petitioner was a Constable in Central Reserve Police



Force and he died in harness on 1978. At the relevant point of time, the petitioner was only 3 (three) months old. After attaining the age of majority, on 27.05.2003 the petitioner preferred an application for appointment under compassionate grounds before the respondent authority. In terms of his candidature for appointment under compassionate ground, he was asked to appear in selection process conducted by the authority and accordingly the petitioner appeared in the selection process and the selection process was completed on 18.11.2003 and the petitioner was declared to be provisionally selected against the vacancy available for compassionate appointment. However, on account of deficiency in height of 1.5 cm, there was a requirement that the said deficiency was required to be condoned by the appropriate authority and as such it was only on 05.01.2004, the said deficiency was condoned by the appropriate authority and in pursuance thereto on 30.01.2004 the Office of the Group Centre, Guwahati, Central Reserve Police Force had issued the offer of appointment letter to the petitioner for the vacant post of Constable General Duty with a direction to join the force on 16.02.2004. The petitioner accordingly on the very day joined his services.

4. In the meantime the Ministry of Finance (Department of Economic Affairs) introduced National Pension System vide Notification dated 22.12.2003 wherein it was notified that all Government servants appointed on or after 01.01.2004 to the posts of the Central Government Service (except armed forces) were mandatorily covered under the said scheme. Subsequent thereto, on 17.02.2020, the Department of Pension, Government of India published an Office Memorandum wherein it was clarified that where results for recruitment was declared before 01.01.2004 against the vacancies occurring on or before 31.12.2003, the candidates declared successful for recruitment shall be eligible



for coverage under the Central Civil Services (Pension) Rules, 1972. It was further stipulated in the said Office Memorandum that the Government servant who were declared successful for recruitment in the results declared on or before 31.12.2003 against the vacancies occurring before 01.01.2004 and are covered under the National Pension System on joining service on or after 01.01.2004 may be given an "ONE TIME OPTION" to be covered under the CCS (Pension) Rules, 1972 and this opportunity shall end on 31.05.2020.

5. The petitioner on 05.05.2020 exercised his option for conversion from National Pension System to CCS (Pension) Rules, 1972 as an one time measure.

6. Pursuant thereto, the Deputy Commandant 95 Battalion of Central Reserve Police Force issued an internal communication on 11.05.2020 to all the Official concerned wherein it was stated that the petitioner was entitled for the benefit of Old Pension Scheme under Central Civil Services (Pension) Rules, 1972. However, on 29.08.2020, the Deputy Inspector General of Police, Group Centre, Guwahati issued an order rejecting the entitlement of the petitioner under the Old Pension Scheme under CCS (Pension) Rules, 1972 in view of the orders dated 08.12.2018 and 24.01.2020. Being aggrieved, the petitioner has approached this Court under Article 226 of the Constitution of India.

7. This Court vide an order dated 19.01.2021 had issued notice making it returnable by 4 (four) weeks.

8. The respondents herein had filed a joint affidavit-in-opposition on 20.07.2021. In the said affidavit-in-opposition more particularly in paragraph No.3, the facts involved in respect to the case of the petitioner has been detailed. It has been mentioned that in terms with the Group Centre, CRPF, Guwahati's Office order dated 29.10.2003, a Board of Officers was constituted for recruitment of CT/GD on compassionate ground and the Board provisionally



selected the petitioner on compassionate ground on 18.11.2003 with recommendation subject to condonation of his height by 1.5 cm. It was further mentioned that on the basis of the recommendation of Board of Officers, the Group Centre, CRPF, Guwahati had requested the IGP, NES for granting condonation of 1.5 cm in height of the petitioner. On 05.01.2004, the IGP, NES vide his Office Letter had condoned the deficiency as regards the petitioner for his shortage of height by 1.5 cm. Thereupon, an offer of appointment was issued to the petitioner on 30.01.2004. Further to that, it was stated that the petitioner was enlisted in CRPF on 16.02.2004 on compassionate ground vide Group Centre, CRPF, Guwahati vide order dated 21.02.2004 and the petitioner was posted in 95 Bn, CRPF w.e.f. 18.05.2017 to 08.12.2020 and presently the petitioner is posted in the 60 Bn, CRPF.

9. It has also been mentioned that the DIGP (Adm) Dte. CRPF, New Delhi vide Signal No.P-III-01/2018-Adm-I-DA-3 dated 23.10.2018 following the instructions issued to the effect "That all candidates selected through the advertisement issued prior to 02.12.2003 (i.e. before the Notification issued for New Pension Scheme by the Govt. of India) need to be treated as members of the Old Pension Scheme under the Central Civil Services (Pension) Rules 1972". In response to the said signal of the DIGP (Adm) Dte. CRPF, New Delhi the GC, CRPF, Silchar vide Office Order No.C-II-01/2018-EC-6 dated 08.12.2018, the petitioner was found to be eligible for Old Pension Scheme.

10. Subsequently, in terms with the DIGP (Adm) Dte. Genl., CRPF, New Delhi letter No.P-III-01/2018-Adm1-DA-3 dated 23.03.2020 read with Government of India, Department of Pension and Pensioners' Welfare Office Memorandum dated 17.02.2020 and the Office Memorandum dated 25.06.2020, it was clarified that the provisions for the personnel whose final result of recruitment



has been declared before 01.01.2004 but appointed after 01.01.2004 were eligible for subject purpose i.e. Old Pension Scheme under the Central Civil Services (Pension) Rules, 1972 and those appointed on compassionate ground by the competent authority on the basis of reference of screening selection Committee where decision had been given before 01.01.2004 proceeding shall be ensured by providing them the benefit of the Old Pension Scheme in place of the New Pension Scheme. It was further mentioned that as the petitioner was granted the condonation of 1.5 cm in height on 05.01.2004 and the petitioner was appointed on 16.02.2004 and as such the petitioner was not eligible to get benefit of the Old Pension Scheme in accordance with DIGP (Adm) Dte. Genl., CRPF, New Delhi letter dated 23.03.2020 read with Government of India, Department of Pension and Pensioners' Welfare Office Memorandums dated 17.02.2020 and 25.06.2020. Further, it was also mentioned that although the petitioner was initially found to be entitled to the benefit of the Old Pension Scheme but subsequently, in view of the order dated 08.12.2018 the petitioner was not entitled for the benefit taking into consideration that the petitioner was appointed after 01.01.2004 for which the impugned order dated 29.08.2020 was passed.

11. From the materials on record, it is clear that the petitioner applied for the post on 27.05.2003 and thereupon the selection was completed on 18.11.2003. However, on account of the deficiency of 1.5 cm, the petitioner was only provisionally selected subject to condonation by the competent authority. It further appears that from the records that on 05.01.2004, the competent authority has condoned the deficiency and thereupon on 30.01.2004 the petitioner was offered the appointment and on 16.02.2004, the petitioner was appointed. It is also relevant to take note of that on 17.02.2020, the



Department of Pension, Government of India had issued the Office Memorandum whereby it was clarified that where results for recruitment was declared before 01.01.2004 against the vacancies occurring on or before 31.12.2003 and the candidates declared successful for recruitment was held to be eligible for coverage under the Central Civil Services (Pension) Rules, 1972. In the said memorandum, it was also clarified to the effect that those persons who were appointed after 01.01.2004 but whose recruitment results were declared prior to 31.12.2003 against the vacancies occurring before 01.01.2004 should be given One Time Option to opt for CCS (Pension) Rules, 1972.

12. It further appears that on the basis thereof, on 05.05.2020, the petitioner has duly exercised the option for the CCS (Pension) Rules, 1972 and thereupon on 11.05.2020 the Deputy Commandant of 95 Battalion of Central Reserve Police Force had issued an instruction that the petitioner would be covered under the Old Pension Scheme under the CCS (Pension) Rules, 1972.

13. In the backdrop of the above, the question which arises is as to whether the petitioner should be deprived of the benefits under the Old Pension Scheme on the ground that the petitioner was only provisionally selected on 18.11.2003 but on account of the concerned respondent authorities having delayed in condoning the deficiency, the petitioner was appointed after 01.01.2004?

14. It is an admitted fact that those persons who were selected in the same selection proceedings but having no deficiency have been granted the benefit under the Old Pension Scheme. In this regard, this Court also finds it relevant to take note of the judgment of the Delhi High Court in the case of ***Inspector Rajendra Singh & Others Vs. Union of India & Others*** reported in ***(2017) SCC Online Del 7879*** wherein the said Court had also taken up a similar issue where there was a deprivation of the benefit of the Old Pension Scheme as per the



Central Civil Services (Pension) Rules, 1972 to the petitioner therein on the ground that the Medical Board's decision came subsequent to 01.01.2014 and consequently, the petitioner therein was appointed after 01.01.2004. The Delhi High Court after taking into account the judgment of a Co-ordinate Bench of the said High Court in the case of ***Naveen Kumar Jha Vs. Union of India***, reported in ***(2012) SCC Online Del 5606*** observed that if there was a delay in declaration of the results and consequent delay in the issue of the letter of appointment, the incumbents should not suffer. It may be relevant to take note of that in the said case before the Delhi High Court, the petitioner therein was also provisionally selected subject to review by the Medical Board and the review was conducted much later for which the petitioner upon being held to be medically fit was issued the appointment letter which was much after 01.01.2004. In that circumstances also, the Division Bench of the Delhi High Court held that the petitioner would be entitled to the Old Pension Scheme. This Court also finds it relevant to refer the reasons assigned in the judgment of the Delhi High Court in the case of ***Naveen Kumar Jha (supra)*** and the paragraphs 3 to 16 being relevant are quoted herein below:

“3. The Staff Selection Commission invited applications to fill up posts of Sub-Inspector in Central Para Military Forces and titled the selection process as 'SSC Combined Graduate Level 2000'. The petitioner applied and took the examination. He cleared the written examination as also the Physical Efficiency Test.

4. Required to appear before a Medical Board for fitness to be ascertained, the petitioner was declared medically unfit as per medical examination conducted on February 04, 2002. Since the procedures of the law entitled the petitioner to seek a remedial examination by being brought before a Review Medical Board and for which he had to file an appeal within 30 days of unfitness being intimated, on February 25, 2002 the petitioner submitted the necessary appeal. Unfortunately, for him he

heard nothing from the respondents on the subject i.e. the date and the place where petitioner was required to be present to be re-examined by the Review Medical Board and in the meanwhile the candidature of others was processed. It was only on January 18, 2003 that the petitioner was intimated to be present before the Review Medical Board and the petitioner duly presented himself before the Board and upon examination was declared fit. By March 2003 others who were successful had joined the respective Para Military Force to which they were allocated to. The petitioner was called for interview on July 2003 and thereafter having cleared the interview was issued letter offering appointment as a Sub-Inspector in CRPF in April 2004. The petitioner thereafter successfully completed the induction training and was attached to the 72nd Bn.CRPF.

5. The problem which the petitioner has highlighted is of not only being placed junior to the entire batch which joined CRPF pursuant to the SSC Combined Graduate Level 2000 Examination but even junior to those who took the SSC Combined Graduate Level 2001 and SSC Combined Graduate Level Examinations held thereafter; the petitioner being placed at the top of the list of the 2004 year batch.

6. This has affected the petitioner adversely because Sub-Inspectors of his batch have earned promotions to the rank of Inspector and are being considered for further promotion to the post of Assistant Commandant.

7. Though the petitioner has earned promotion to the post of Inspector but even in said rank has lost out in seniority and right to be considered along with his batchmates for promotion to the post of Assistant Commandant.

8. Another injury suffered by the petitioner is the change in the policy of the Central Government to do away with Old Pension Scheme which automatically made eligible all those who joined Central Government prior to December 31, 2003. The petitioner has been held entitled to the new Pension Scheme.

9. With respect to the Pension Scheme it assumes importance to note that petitioner's batchmates were issued letters offering appointment in March 2003 and had petitioner likewise been issued a letter offering appointment, he too would have been a member of the old Pension Scheme. As a result of petitioner being offered employment in April

2004, he has perforce been made a member of the new Pension Scheme.

10. On the subject of delay in conducting Review Medical Boards, in the decision dated May 26, 2011 deciding WP(C) No. 5400/2010 Avinash Singh v. UOI & Ors., a Division Bench of this Court held, in para 17 to 20 as under:—

“17. It is settled law that if appointment is by selection, seniority of the entire batch has to be reckoned with respect to the merit position obtained in the selection and not on the fortuitous circumstance on the date on which a person is made to join.

18. We highlight in the instant case the fortuitous circumstance of the petitioners being made to join as Assistant Commandant on 08.08.2005 is not the result of anything created by the petitioners but is a result of a supine indifference and negligence on the part of the ITBP officials.

19. Thus, petitioners would be entitled to their seniority as Assistant Commandant with respect to their batch-mates in the context of the merit position in the select panel. We make it clear, the seniority as Assistant Commandant of the entire batch would be a reflection of the merit position in the select list and not the date of joining.

20. It is trite that where a thing is deemed to come into existence everything which logically flows therefrom has to be followed and the imagination cannot boggle down. In other words, the effect of the petitioners' seniority being reckoned with reference to the select panel would mean that the petitioners would come at par with their brethren who joined on 02.11.2004. Since their brethren were granted 1 year qualifying service relaxation, petitioners would be entitled to the same benefit and additionally for the reason the next below rule requires that if a person junior in the seniority position acquires the necessary qualifying service, the person above has also to be considered for promotion.”

11. On facts it needs to be noted that the seven petitioners of WP(C) No.

5400/2010 had lost out on their seniority with reference to their merit position in the Select List due to delay in conducting their Review Medical Evaluation and in the interregnum their batchmates had joined ITBP.

12. On parity of reasoning and application of law the petitioner is held entitled to his seniority being refixed as a Sub-Inspector in CRPF with reference to his merit position at the SSC Combined Graduate Level 2000 Examination i.e. those who joined CRPF pursuant to the said examination in March 2003. The petitioner has already earned promotion to the post of Inspector and accordingly we direct that he would be entitled to seniority refixed in said rank with reference to his revised seniority position in the rank of Sub-Inspector, and this would mean that the petitioner would be considered for promotion to the post of Assistant Commandant as per the revised seniority list.

13. The respondents are therefore directed to revise the seniority position of the petitioner in the two ranks within a period of four weeks from today and thereafter consider the petitioner along with other eligible persons for promotion to the post of Assistant Commandant.

14. As regards wages, on the principle of not having shouldered responsibility for the higher post, we do not direct backwages to be paid.

15. On the subject of the petitioner being entitled to the old Pension Scheme, in similar circumstances, deciding WP(C) No. 10028/2009 Amrendra Kumar v. UOI, where the petitioner therein was also similarly deprived the opportunity to join with his batch on account of delay in conducting medical re-examination, the Court had directed that said writ petitioner would be entitled to the benefit of the old Pension Scheme which remained in force till December 31, 2003.

16. The petitioner would be entitled to similar benefit and accordingly the next mandamus issued is by way of a direction to the respondents to treat the petitioner as a member of the pension scheme which remained in vogue till December 31, 2003."

15. In the instant case, on 27.05.2013, the petitioner applied for appointment on compassionate ground and pursuant to a selection proceedings, he was provisionally selected on 18.11.2003 subject to the deficiency of 1.5 cm in height being condoned by the competent authority. The condonation of 1.5 cm



was not in the hands of the petitioner and it was due to the delay caused by the competent authority in condoning the delay of 1.5 cm on 05.01.2004, the petitioner was subsequently given the appointment on 30.01.2004. The Supreme Court in the case of **Secretary to the Govt., Department of Education (Primary) and Others Vs. Bheemesh Alias Bheemappa reported in (2021) SCC Online SC 1264** observed that there is no principle of statutory interpretation which permits a decision on the applicability of a Rule, to be based upon an indeterminate or variable factor. It was also observed that a rule of interpretation which produces different results, depending upon what the individuals do or do not do, is inconceivable. Paragraph 19 of the said judgment being relevant is quoted herein below:

19. The important aspect about the conflict of opinion is that it revolves around two dates, namely, (i) date of death of the employee; and (ii) date of consideration of the application of the dependant. Out of these two dates, only one, namely, the date of death alone is a fixed factor that does not change. The next date namely the date of consideration of the claim, is something that depends upon many variables such as the date of filing of application, the date of attaining of majority of the claimant and the date on which the file is put up to the competent authority. There is no principle of statutory interpretation which permits a decision on the applicability of a rule, to be based upon an indeterminate or variable factor. Let us take for instance a hypothetical case where 2 Government servants die in harness on January 01, 2020. Let us assume that the dependants of these 2 deceased Government servants make applications for appointment on 2 different dates say 29.05.2020 and 02.06.2020 and a modified Scheme comes into force on June 01, 2020. If the date of consideration of the claim is taken to be the criteria for determining whether the modified Scheme applies or not, it will lead to two different results, one in respect of the person who made the application before June 1, 2020 and another in respect of the person who applied after June 01, 2020. In other words, if two employees die on the same date and the dependants of those employees apply on two different dates, one before the modified Scheme comes into force and another thereafter, they will

come in for differential treatment if the date of application and the date of consideration of the same are taken to be the deciding factor. A rule of interpretation which produces different results, depending upon what the individuals do or do not do, is inconceivable. This is why, the managements of a few banks, in the cases tabulated above, have introduced a rule in the modified scheme itself, which provides for all pending applications to be decided under the new/modified scheme. Therefore, we are of the considered view that the interpretation as to the applicability of a modified Scheme should depend only upon a determinate and fixed criteria such as the date of death and not an indeterminate and variable factor.

16. The above quoted judgment though relates to the date for applying the relevant scheme for compassionate appointment but the principle enclosed therein squarely applies to the instant case inasmuch as if the date of appointment which is based upon a consideration whether to condone the deficiency in height of 1.5 cm is not in the hands of the petitioner and similarly situated persons like the petitioner has been selected and given appointment prior to 01.01.2014 but on account of late consideration of the prayer of the Petitioner for condoning the deficiency in height, the petitioner was appointed subsequently, then the same would violate the mandate of Article 14 of the Constitution. It is relevant to observe that if the petitioner's height was not condoned, the petitioner would not have been entitled even though provisionally selected. But as stated, the condoning of the height was not in the hands of the petitioner and the late consideration in condoning of the height cannot be a reason for depriving the petitioner to be included as per the Old Pension Scheme.

17. This Court therefore is of the opinion that the petitioner is entitled to Old Pension Scheme as mentioned in the CCS (Pension) Rules, 1972. The impugned order dated 29.08.2020 by which it was held that the petitioner was not entitled



to the Old Pension Scheme but was covered by new Pension Scheme, in the opinion of this Court is not in consonance with law and accordingly, the same is interfered with.

18. The respondent authorities are therefore directed to pass appropriate consequential order in pursuance to the directions and observations made hereinabove to the effect that the petitioner is entitled to the Old Pension Scheme in terms with the CCS (Pension) Rules, 1972.

19. The learned counsel for the petitioner submits that the petitioner in the meantime had been transferred to another battalion. Under such circumstances, the said process be completed by the concerned respondent authorities within a period of 45 days from the date a certified copy of the instant judgment and order is served upon the respondent No.2 through the Commandant of his present Battalion.

20. With above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant