

(2025) 01 CAT CK 0019

Central Administrative Tribunal Cuttack Bench, Cuttack

Case No: Original Application No. 260, 00379 Of 2017

Shailendra Kumar Jha

APPELLANT

Vs

Commissioner Of Kendriya
Vidyalaya Sangathan, New Delhi,
18th Institutional Area, Sahid
Jeet Singh Marg, New
Delhi-110016 & Ors.

RESPONDENT

Date of Decision: Jan. 6, 2025

Hon'ble Judges: Sudhi Ranjan Mishra, Member (J); Pramod Kumar Das, Member (A)

Bench: Division Bench

Advocate: N.R. Routray, H.K. Tripathy

Final Decision: Dismissed

Judgement

Pramod Kumar Das, Member (A)

1. The case of the applicant in brief is that he was one of the candidates in pursuance of the Advertisement issued in Employment News dated 26th

October/1st November, 2002 for recruitment to the post of TGT (Sanskrit) in KVS and, having been selected through regular process of selection,

joined as such on 28.01.2004 in KV-I Port Blair, Andaman & Nicobar. The Govt. of India made it mandatory for all new recruits to the central govt.

service (except the armed forces) from 01.01.2004 in place of Old Pension Scheme (OPS) vide notification dated 22.12.2003. Respondent No.1 on

01.04.2013 issued common All India Seniority list of TGTs wherefrom the applicant came to know that many similarly situated persons, both his senior

and junior, were brought under the OPS whereas he was kept under NPS. Therefore, he submitted application on 28.08.2013 requesting to bring him

within the OPS. The respondent No.4 considered the representation of the applicant but rejected the same in letter dated 15/17.10.2013. After expiry

of four years from the date of the rejection of his representation, he approached before the CAT, Patna Bench in OA No. 213/2017 along with MA

135/2017. The Patna Bench of the Tribunal vide order dated 03.04.2017 dismissed the OA at the admission stage on the ground of jurisdiction since

the applicant was serving at Jharsuguda (Odisha), however, with liberty to seek redressal through appropriate legal forum. Thereafter, the applicant

filed this OA before this Tribunal on 14.06.2017 along with MA 340/2017 seeking to condone the delay inter alia praying as under:

âœ(a) To quash the orders of rejection dated 15/17.10.2013 under Ann. A/6;

b) And to direct the respondents to bring the applicant under the Old Pension Scheme at par with other similar TGT(S) (Sanskrit) as per all India

Seniority list published vide letter dtd. 01.04.2013.

c) And to direct the respondents to return the amounts already recovered from the salary under the headings contribution towards the define

contributory pension scheme;

And pass any other orderâ€|â€|â€|â€|â€|â€|..â€

2. The main plank of argument of Ld. Counsel for the applicant in support of the relief is that the respondents circulated the seniority list vide letter

dated 01.04.2013 wherein it has been stated that the seniority list is prepared on the basis of the merit, i.e. the marks secured by the candidates on the

basis of interview/written test held in pursuance of notification dated 26th October/1st November, 2002 wherein though names of S/Sh Tejveer Singh

(Srl. No. 5334), Vimless (Srl. No. 5423), Her Bhajan Meena (Srl No. 5426) and Santosh Kumar Verma (Srl. No. 5503) appeared below the name of

the applicant in the merit list yet they were shown above the applicant since they joined in the month of September, 2003 whereas the applicant joined

the post on 28.01.2004 pursuant to offer of appointment issued to him at a later date, i.e. on 15.01.2004. He came to know such discrepancy/illegality

only when he received the all India seniority list through forwarding letter dated 01.04.2013 and, hence, by making representation, he prayed before

respondent No.1 for conversion of his PRAN Account Number to GPF Account Number with other benefits. It is contended that the notification

issued by the Govt. of India on 22.12.2003 introducing new restructured defined contribution pension system (NPS) in place of OPS whereby making

it mandatory for new recruits to central govt. service on or after 01.01.2004. In the instant case, the notification was dated 26th October/1st

November, 2002. Examination held on 12.04.2003 documents of the candidates were verified on 11.07.2003. List of eligible candidate was published in

the last week of July, 2003 whereas offer of appointment was issued to the applicant only on 15.01.2004, therefore, for the delay caused in issuing the

offer of appointment, applicant cannot be held responsible. Ld. Counsel for the applicant submitted that in the above circumstances, the applicant is

covered and governed by the rules existing as on the date of notification and subsequent change of the service condition has no application to him as

held by the Honâ€™ble Apex Court in the cases of Y.V.Rangaih & Ors Vs. J.Srinivas Rao & Ors, (1983) SCC 284 and the order of the Honâ€™ble

High Court in the case of State of Orissa & Ors Vs. Manoj Kumar Panda & Ors, 2013 (II) ILR-Cuttack-746. It is contended that the respondents

department without taking into consideration the aforesaid facts, rejected his representation so to say in an unreasoned order, which is not tenable.

Accordingly, Ld Counsel for the applicant has made endeavour to pursue this Tribunal to grant the relief claimed in this OA.

3. Respondents filed their counter objection/contesting the case of the applicant. Relying on the stand taken in the counter, Ld. Counsel for the

respondents has submitted that none of the grounds stated by the applicant in his pleadings as also in course of argument has any effect to nullify the

decision taken by the KVS as illegal or erroneous. It is submitted that KVS is an autonomous body under the Ministry of Human Resource

Development. The Board of Governors of the KVS consisting of eminent educationalists and administrations from all over the country decides the

policy and guidelines of the KVS. The service condition of the KVS are governed by the rules incorporated in the education code and the rules/order

issued by the Govt. of India made applicable to the employees of the KVS only its adoption by the Sangathan. By adoption of all the pay and

allowances relating matters like GPF, Contributory Provident Fund etc., the same were made applicable to the employees of the KVS and by adoption

of the notification dated 22.12.2003 of the govt. of India, the NPS scheme was introduced for the new recruits w.e.f. 01.01.2004.

3.1 According to the pleadings reiterated by Ld. Counsel for the respondents in course of hearing, S/Sh Tejveer Singh (Srl. No. 5334), Her Bhajan

Meena (Srl No. 5426) and Santosh Kumar Verma (Srl. No. 5503) were selected against the panel year 2002-2003 and Sri Vimless (Srl. No. 5423) is

from the panel of SC candidates for the year 2003-2004. The above named employees joined the post on or before 31.12.2003 when GPF-cum-

Pension Scheme was in vogue. The selection of the applicant was against the panel year 2003-2004 and he was issued the offer of appointment on

15.01.2004 and he joined on 28.01.2004, i.e. after the cut off date of 31.12.2003. Therefore, he was rightly taken to be an employee under NPS. The

applicant without any demur accepted the offer of appointment and joined the post in 28.01.2004 being well aware that he will be covered and

governed by the NPS Rules introduced by the Govt. of India and adopted by the KVS and, therefore, he cannot veer round and claim the benefit on

the grounds as agitated in the OA.

3.2 It has also been submitted by him that the applicant has been correctly placed under NPS. Placement of candidates in NPS does not depend on

the merit secured in any competitive examination rather the implementation of NPS depends on the date the candidate joins the service, i.e. on or after

01.01.2004 and it is not based on the date of arising of vacancy. The cut off date is with reference to date of joining and in no way related to year of

Recruitment/examination. Applicant has not challenged the cut off date in vogue for applicability of NPS, i.e. on or from 01.01.2004, which apply to all

central govt. employees. It is further submitted that the Scheme is no more in existence. It is trite law that even if a candidate is selected he does not

have any indefeasible right to be appointed, even if vacancy exists. Therefore, the claim of the applicant that since he was selected and delay is not

attributable to him, he should be brought within the OPS as in the case of others named above, is not justified. Hence, Ld. Counsel for the respondents

relying on various decisions of the Honâ€™ble Court/Tribunal has submitted that the order dated 15/17.10.2013 is just and proper requiring no

interference by this Tribunal.

4. We have considered the submissions of the parties and perused the records.

5. It is not in dispute that as a matter of policy the Legislation brought into the field the Scheme of NPS making it mandatorily applicable to the

appointees to Govt. of India service w.e.f. 01.01.2004. It is also not in dispute that the applicant selected to the post of TGT (Sanskrit) in pursuance of

the Notification dated 26th October/1st November, 2002 and joined on 28.01.2004 in KV-I Port Blair, Andaman & Nicobar without any demur relating

to his delayed appointment. However, it is the case of the applicant that he came to know from the common All India Seniority List of TGTs

circulated vide letter dated 01.04.2013 that S/Sh Tejveer Singh (Srl. No. 5334), Vimless (Srl. No. 5423), Her Bhajan Meena (Srl No. 5426) and

Santosh Kumar Verma (Srl. No. 5503), who were ranked below him in the selection, joined earlier and were brought within the OPS and, hence,

submitted representation agitating his grievance and, therefore, irrespective of his date of joining, he should be treated as an appointee under OPS. The

respondents clarified the matter in the counter that S/Sh Tejveer Singh (Srl. No. 5334), Her Bhajan Meena (Srl No. 5426) and Santosh Kumar Verma

(Srl. No. 5503) were selected against the panel year 2002-2003 and Sri Vimless (Srl. No. 5423) is from the panel of SC candidates for the year 2003-

2004. The above named employees joined the post on or before 31.12.2003 when GPF-cum-Pension Scheme was in vogue. Whereas the selection of

the applicant was against the panel year 2003-2004 and he was issued the offer of appointment on 15.01.2004 and he joined on 28.01.2004, i.e. after

the cutoff date of 31.12.2003. The above facts have not been controverted by the applicant. Hence, the stand of the applicant that since the above

named officials having ranked below him in the select panel having been brought into the OPS, he also should have been brought within OPS does not

sound to judicial conscience. As regards, delay in issuing the offer of appointment, the applicant should not be made to suffer is concerned, it may be

recorded that law is well settled that merely because placement of name in the select list one cannot claim as a matter of right to be appointed. It is

not the case of the applicant that anyone below him for the pane year 2003-04 under the same category was appointed earlier than him. It is within

domain of the authority concerned to decide when offer of appointment to a selected candidate can be issued after making due formalities. It may also

noteworthy that such a point the applicant could have raised at the time he joined into service on 28.01.2004, which he cannot raise at this distance

point of time. Hence, this argument of the Ld. Counsel of the applicant falls to the ground. Next contention of the Ld. Counsel for the applicant that

subsequent to the notification dated 22.12.2003 introducing the scheme of NPS, the Govt. of India issued several clarification under which the case of

the applicant could have been considered. This was strongly opposed by Ld. Counsel appearing for the KVS by stating that the order issued by the

Govt. of India cannot be made applicable to be KVS unless the same is specifically adopted by the Board of Governors of the KVS. Therefore, the

stand of the applicant that his case ought to have been considered as per the subsequent orders/clarifications issued by the Govt. of India cannot be

accepted. The applicant did not produce any such evidence to the extent that the KVS issued any such instruction by adopting the clarifications issued

by the Govt. of India.

6. The last contention of the Ld. Counsel for the applicant is that as held by the Honâ€™ble Apex Court in the case of Y.V.Rangaih (supra), the

order of the Honâ€™ble High Court of Odisha in Manoj Kumar Panda (supra) and the order of the Honâ€™ble High Court of Uttarakhand at Nanital

in Special Appeal No. 330/2013, the applicant is governed by the service conditions stood on the date of advertisement and not on the date of his

joining. Since, the NPS came into existence w.e.f. 01.01.2004, the applicant ought to have been governed by the OPS, which was in vogue prior to the

cut off date. We find that the proposition of law laid down in the above case has been negative by the Honâ€™ble Apex Court in subsequent decision

rendered in the case of State of Himachal Pradesh vs Raj Kumar & Ors., 2022 Livelaw (SC) 502. Hence, the applicant is not entitled to the relief

on this score also. The applicant also relied on the order of the CAT, Ernakulam Bench in OA No. 20/2015 dated 15.02.2016 (Sheeba B & Anr. Vs.

UOI & Ors.) [Postal] and Jabalpur Bench of the Tribunal in OA No.290/2017 in the case of Sumanta Kumar Baghmar & Ors Vs.UOI & Ors.

[Railway] in support of his prayer made in the OA but we find that the above two decisions have no application in the present case because this case

is of KVS for which the KVS have their own set of rules and any Govt. of India order/circular is subject to acceptance by the Board of Governors.

7. In view of the detailed discussions made above, we find no merit in this OA, which is dismissed accordingly by leaving the parties to bear their own

costs.