

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.334 OF 2020

DISTRICT : THANE

Sub.:- Pensionary Benefits

Shri Dattatraya Y. Dange.)
Age : 60 Yrs, Occu.: Retired,)
R/at Shree Krupa C.H.S, 'A' Wing,)
Flat No.302, Krishnasthal, Building No.2,)
Western Express Highway, Miragaon,)
Mira Road, District : Thane – 401 107.)...**Applicant**

Versus

1. Additional Director General of)
Police and Director of Police,)
Wireless Message, Maharashtra)
Govt., Pune.)
2. Additional Chief Secretary.)
Industries, Energy and Labour Dept.,)
Mantralaya, Mumbai – 400 032.)
3. General Administrative Department,)
Mantralaya, Mumbai – 400 032.)
4. Commandant, State Reserve Police)
Force, Group XI Balegaon,)
Kalyan, District : Thane.)
5. Principal Secretary,)
Finance Department, Mantralaya,)
Mumbai – 400 032.)...**Respondents**

Smt. Punam Mahajan, Advocate for Applicant.

Smt. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 28.02.2023

JUDGMENT

1. The Applicant has challenged the communication dated 28.01.2020 issued by Respondent No.2 thereby rejecting his claim for old pension scheme in terms of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982' for brevity) on the ground that he has been appointed after cut-off date 01.11.2005, and therefore, governed by new Defined Contribution Pension Scheme, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Following are the admitted facts giving rise to this O.A.

- (i) Respondent No.1 – Additional Director General of Police and Director of Police, Wireless Message, Government of Maharashtra, Pune had published Advertisement on 20.01.2005 inviting applications to fill-in various posts including the post of Assistant Sub-Inspector [Storeman] from eligible candidates (Page No.14 of Paper Book).
- (ii) In response to the Advertisement, the Applicant appeared in the written examination conducted on 22.06.2005 and succeeded.
- (iii) Applicant was interviewed by Selection Committee on 29.08.2005 (Page No.88 of P.B.).
- (iv) Respondent No.1 declared the result of successful candidates on 29.10.2005 with specific mention that the appointment letters to the selected candidates with their posting are being issued separately to the individuals including the Applicant whose name figured in select list (Page Nos.57 of P.B.).

- (v) In the meantime, i.e. on 31.10.2005, the Government of Maharashtra notified new Defined Contribution Pension Scheme to State Government servants recruited on or after 1st November, 2005.
- (vi) Respondent No.1 issued appointment letter to the Applicant on 02.11.2005 (Page No.17 of P.B.) and in pursuance of it, the Applicant joined the post on the establishment of Respondent No.1.
- (vii) Later, he appointed to the post of Assistant [Class-II (Non-Gazetted)] in view of Advertisement published by MPSC in Rural Development and Water Conservation Department by order dated 01.11.2008 with benefit of his past service from 30.11.2005 (Page Nos.21 and 23).
- (viii) Applicant stands retired on 31.05.2019 on attaining age of superannuation from the establishment of Respondent No.2.
- (ix) Later, he made representation to Respondent No.2 – Additional Chief Secretary, Industries, Energy and Labour Department, Mantralaya, Mumbai on 10.01.2020 for entitlement to old pension scheme in terms of 'Pension Rules of 1982', but it came to be rejected by communication dated 28.01.2020 stating that since he joined after cut-off date i.e.01.11.2005, he is governed by new Defined Contribution Pension Scheme.

3. It is on the above background, the Applicant has challenged the communication dated 28.01.2020 in the present O.A.

4. Respondent No.2 has filed Affidavit-in-reply and resisted the O.A. *inter-alia* denying the entitlement of the Applicant to old pension scheme

stating that since Applicant joined after cut-off date, he is governed by Defined Contribution Pension Scheme.

5. Smt. Punam Mahajan, learned Advocate for the Applicant sought to assail the impugned communication *inter-alia* contending that since entire process of recruitment except formal appointment letter has been completed before cut-off date, Applicant's right to old pension scheme cannot be taken away by issuing appointment letter belatedly. In this behalf, she has further pointed out that the benefit of old pension scheme has been granted to the candidates who were selected on the basis of same Advertisement dated 20.01.2005 by M.A.T, Aurangabad Bench in **O.A.No.739/2021 (Vilas Yadav & Ors. Vs. State of Maharashtra) decided with connected O.As. on 23.12.2022**. She, therefore, submits that the Applicant being exactly similarly situated person, he is entitled to the benefit of decision rendered by the Tribunal at Aurangabad Bench on the ground of parity.

6. Per contra, Smt. K.S. Gaikwad in reference to contentions raised in Affidavit-in-reply and Notification issued by Government of Maharashtra dated 31.10.2005 submits that since Applicant is appointed after cut-off date, he is governed by new Defined Contribution Pension Scheme introduced by Government of India and adopted by Government of Maharashtra with necessary amendments in 'Pension Rules of 1982' and Maharashtra Civil Services (Commutation of Pension) Rules, 1984 (hereinafter referred to as 'Commutation of Pension Rules of 1984' for brevity).

7. In view of submissions, the issue posed for consideration is whether impugned communication dated 28.01.20 is sustainable in law and Applicant can be barred from availing the benefits of old pension scheme in terms of 'Pension Rules of 1982'.

8. Notably, Government of Maharashtra adopted new Defined Contribution Pension Scheme introduced by Government of India through Department of Pension and PW. After the scheme was introduced and implemented, the Government of India had received representations from Government servants who were appointed on or after 01.11.2005 i.e. cut-off date for Central Government employees on the ground that their appointment was delayed on account of administrative reasons or lapses, and therefore, claimed benefit of old pension scheme. Accordingly, Government of India, Department of Pension and PW by its letter dated 17.02.2020 issued Office Memorandum. Para No.3 of Office Memorandum is material, which is as under :-

“3. From the representations of the Government employees and the references received from Ministries/Departments, it has been observed that in many of the cases referred to this Department, selection process (including written examination, interview and declaration of result) for recruitment had been completed before 01.01.2004 but the employee joined the Government service on or after 01.01.2004. A few illustrations where the selection was finalized before 01.01.2004 but actual joining took place on or after 01.01.2004 are under :

- (i) The result for recruitment was declared before 01.01.2004 but the offer of appointment and actual joining of the Government servant was delayed on account of police verification, medical examination, etc.
- (ii) Some of the candidates selected through a common selection process were issued offers of appointments and were also appointed before 01.01.2004 whereas the offers of appointment to other selected candidates were issued on or after 1.1.2004 due to administrative reasons/constraints including pending Court/CAT cases.
- (iii) Candidates selected before 01.01.2004 through a common competitive examination were allocated to different Departments/organization. While recruitment process was completed by some Department(s)/organizations on or before 31.12.2003 in respect of one or more candidates, the offers of appointment to the candidates allocated to the other Departments/organization were issued on or after 01.01.2004.
- (iv) Offers of appointment to selected candidates were made before 01.01.2004 with a direction to join on or after 01.01.2004.

- (v) Offers of appointment were issued to selected candidates before 01.01.2004 and many/most candidates joined service before 01.01.2004. However, some candidate(s) were allowed extension of joining time and they joined service on or after 01.01.2004. However, their seniority was either unaffected or was depressed in the same batch or to a subsequent batch, the result for which subsequent batch was declared before 01.01.2004.
- (vi) The result for recruitment was declared before 01.01.2004 but one or more candidates were declared disqualified on the grounds of medical fitness or verification of character and antecedents, caste or income certificates. Subsequently, on review, they were found fit for appointment and were issued offers of appointment on or after 01.01.2004.

In all the above illustrative cases, since the result for recruitment was declared before 01.01.2004, denial of benefit of pension under CCS (Pension) Rules, 1972 to the affected Government servants is not considered justified.”

9. True, Government of Maharashtra by Notification dated 31.10.2005 notified that existing pension scheme i.e. ‘Pension Rules of 1982’ (old Pension Scheme) and ‘Commutation of Pension Rules, 1984’ and existing General Provident Fund Scheme would not be applicable to Government servants who are recruited on or after 01.11.2005 and they will be governed by new Defined Contribution Pension Scheme as introduced by Government of India. Indisputably, entire recruitment and selection process has been completed prior to 01.11.2005. All that, what remained was the issuance of formal appointment letter which was issued on 02.11.2005 and in pursuance of it, the Applicant joined on 30.11.2005. At this juncture, pertinent to note that why Respondent No.1 declared the result of examination and published list of selected candidates by communication dated 29.10.2005. It was specifically mentioned therein that “the appointment letters to the selected candidates with their posting are being issued separately to the individuals”. As such, entire process of recruitment and selection had come to an end on 29.10.2005 and only formal appointment order was to be issued which was later issued belatedly on 02.11.2005. However, in the meantime, Government had notified new Defined Contribution

Pension Scheme on 30.11.2005 making it applicable to the persons deputed on or after 01.11.2005.

10. As stated above, the entire recruitment process was over and results were also declared on 29.10.2005 i.e. before cut-off date 01.11.2005. Only appointment order was to be issued which was issued belatedly on 02.11.2005 i.e. on next day of cut-off date. In such situation, the delay on the part of Respondents in issuing appointment order would not take away Applicant's right to old pension scheme, since entire recruitment process was completed including the declaration of the results and names of successful candidates. This being the admitted position, Office Memorandum issued by Government of India, Department of Pension and PW on 17.02.2020 is squarely attracted. In the said Office Memorandum, it is clarified that where result of recruitment was declared before cut-off date, the denial of benefit of pension under old pension scheme to the effected Government servant would be unjust.

11. That apart, Applicant is entitled to the benefit of decision rendered by MAT, Aurangabad Bench in **O.A.No.739/2021 (Vilas M. Yadav Vs. State of Maharashtra) decided on 23.12.2022**. Notably, Applicants in that O.As were also recruited in pursuance of same Advertisement dated 20.01.2005 on the basis of which present Applicant also made an application for the post of Assistant Sub-Inspector (Storeman). MAT, Aurangabad Bench allowed the O.A. and directed the Respondents to give benefit of old pension scheme to the Applicants in O.As. The perusal of Judgment of MAT in **Vilas Yadav's** case (cited supra) further reveals that Applicant's name is also referred in the Judgment as a reference. In that O.A, Applicants therein made a reference that the present Applicant Dattatraya Y. Dange had applied to make old pension scheme applicable, but his claim has been rejected by communication dated 28.01.2020 which was the basis for filing O.A.No.739/2021 before MAT, Aurangabad Bench, since Applicants therein also apprehended same treatment by the

Respondents and filed O.A. which ultimately came to be allowed on 23.12.2022. Thus, the present Applicant being similarly situated is entitled to the benefit of decision in O.A.No.739/2021. When specific query was raised to learned P.O. about the challenge to the order passed in O.A.No.739/2021, she fairly concedes that so far no steps are taken to challenge the order passed in O.A.No.739/2021. Leaving aside the issue of challenging the order passed in O.A.No.739/2021, the entire recruitment process including result of the process and declaration of the names of successful candidates being over before cut-off date, Applicant's right to get the benefit of old pension scheme has been crystalized and it could not be taken away by issuing appointment order purposely after cut-off date. It is lapse on the point of Respondents for which Applicant cannot be blamed. The Respondents cannot take disadvantage of their own lapses.

12. In this behalf, reference of decision of Delhi High Court in ***Writ Petition No.756/2020 [Dr. Davinder Singh Brar Vs. Union of India & Ors.] decided on 28.01.2020*** is inevitable. In that case, dealing with exactly similar situation where entire recruitment process was completed before cut-off date, but appointment order was issued subsequent to cut-off date, the benefit of old pension scheme was denied to Central Government employees. However, Hon'ble Delhi High Court in reference to its various earlier decisions granted the benefit of old pension scheme. Pertinently, the said decision was challenged by filing SLP No.173/2021 before Hon'ble Supreme Court, but it came to be dismissed on 04.02.2021.

13. In view of above, it is no more *res-integra* that where recruitment process is completed before cut-off date, the employee cannot be denied the benefit of old pension scheme. The impugned order dated 28.01.2020 is thus arbitrary and totally unsustainable in law and liable to be quashed.

14. True, Applicant stands retired on 31.05.2019 and in view of implementation of the Defined Contribution Pension Scheme, he made contribution towards new pension scheme. He was paid GIS, Leave Encashment as informed by learned P.O. However, he was not paid the benefit of old pension scheme in view of application made by him to the Department on 01.09.2020 to keep it on hold in view of challenge raised by him in this O.A. Since in view of aforesaid discussion, Applicant will be entitled to the benefit of old pension scheme, he cannot take both the benefits simultaneously. The contribution made by him in Defined Contribution Pension Scheme is required to be refunded to him and he should be paid pension in terms of MCS (Pension) Rules, 1982 as well as MCS (Commutation of Pension) Rules, 1984. Hence, the following order.

ORDER

- (A) Original Application is allowed.
- (B) Impugned communication dated 28.01.2020 is quashed and set aside.
- (C) Applicant is entitled to the benefit of MCS (Pension) Rules, 1982 as well as MCS (Commutation of Pension) Rules, 1984, the Respondents are directed to issue necessary order and to ensure the payment of pension and commutation within two months from today.
- (D) Contribution made by Applicant in Defined Contribution Pension Scheme be also refunded to him within two months from today.
- (E) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 28.02.2023
Dictation taken by :
S.K. Wamanse.

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