

IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A. No. 61 of 2025

1. Indian Institute of Technology (Indian School of Mines), Dhanbad. through its Director, having office at IIT-ISM Dhanbad Campus, P.O.- ISM, P.S. - Saraidhela, District - Dhanbad.

2. The Director, Indian Institute of Technology (Indian School of Mines), Dhanbad, having office at IIT-ISM Dhanbad Campus, P.O. - ISM, P.S.- Saraidhela, District - Dhanbad ... Appellants

Versus

Dr. Praveen Kumar, Son of Sri Panchanan Sharma, residing at 122 CMO Bungalow, IIT-ISM Dhanbad Campus, P.O. - ISM, P.S. - Saraidhela, District - Dhanbad ... Respondent

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJESH SHANKAR**

For the Appellants : Mr. Abhijeet Kumar Singh, C.G.C.
For the Respondent : Mr. Manoj Tandon, Advocate.
Mr. Siddharth Ranjan, Advocate.
Ms. Shivani Bhardwaj, Advocate.

Per Tarlok Singh Chauhan, C.J.

03/Dated: 18.09.2025

I.A. No. 11554 of 2024

1. For the reasons stated in the Interlocutory Application, which is duly supported by an affidavit filed by the appellants, we find sufficient cause to condone the delay of 164 days that has crept up in filing the Appeal.

2. Accordingly, the aforesaid delay is condoned and I.A. No.11554 of 2024 stands disposed of.

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3. Heard the parties.

4. The moot question, which arises for determination before this Court in the instant appeal, is whether any appointment made pursuant to notification/advertisement issued prior to 01.01.2004 can be dealt with under the New Contributory Pension Scheme which came into existence only with effect from 01.01.2004.

5. The writ petitioner/respondent herein approached the writ Court by filing a writ petition wherein, he has claimed for the following reliefs:-

“(i) For a direction commanding upon the respondent No. 2 to extend the benefits of Old Pension Scheme (for short ‘OPS’)/ GPF-cum-Pension to the petitioner, as the Advertisement was issued on 2nd September, 2003 whereas the New Pension Scheme (for short ‘NPS’) was introduced on 22nd December, 2003 and was made effective from 01.01.2004.

(ii) Further prayer has been made for direction upon the respondents to give all consequential benefits to the petitioner as per Old Pension Scheme.”

6. The undisputed facts are that the respondent was appointed to the post of the Deputy Medical Officer in the Indian Telephone Industries Limited, a Public Sector Undertaking of the Government of India on 24.11.1992. While he was posted as such, an advertisement was issued by the Indian School of Mines, Dhanbad on 02.09.2003 for appointment to the post of Senior Medical Officer.

7. The respondent being fully eligible submitted his application for appointment to the said post. The selection process according to the respondent was delayed at the hands of the appellants and it is eventually on 03.04.2004 that the respondent came to be called for the interview and thereafter offered appointment on 12.04.2004.

8. However, in the meantime the New Pension Scheme was notified on 22.12.2003, made effective from 01.01.2004. Pursuant to the selection, the respondent was relieved from the post of Senior Medical Officer in the Indian Telephone Industries Limited and thereafter, he joined the Indian School of Mines on 30.06.2004.

Upon joining of the new assignment, the respondent was kept in New Pension Scheme and not in Old Pension Scheme contrary to the terms and conditions of the Advertisement dated 02.09.2003.

9. It was the further case of the respondent that he had requested a number of times to the appellants-authorities to keep him in the Old Pension Scheme but in vain, constraining the respondent to submit a representation dated 03.03.2020 requesting the appellants to allow him to be shifted to the Old Pension Scheme i.e. G.P.F.-cum-Pension as per the advertisement.

10. However, the appellants took no action on the same, constraining the respondent to approach the writ Court. The learned writ Court allowed the writ petition by concluding that if the Advertisement was floated prior to the coming into effect of a new Scheme i.e. New Pension Scheme (NPS), all such benefits which were in vogue and available at the time of publication of the advertisement would continue to be made available to the new entrants, as if they joined the post prior to the cut-off date, so fixed and his offer of appointment was issued after the cut-off date, would not affect the rights of the new entrants.

11. It is vehemently argued by the learned counsel for the appellants that the findings recorded by the learned writ Court are absolutely perverse and therefore, not sustainable in the eyes of law.

12. It is a conceded position that on the date of the advertisement of the post, it was the Old Pension Scheme that was in vogue.

13. An identical issue came up before the learned Delhi High Court in **W.P. (C) 2810 of 2016**, titled ***Inspector Rajendra Singh***

and others v. Union of India and others, decided on 27.03.2017, wherein, it was held that wherever the appointment was made after 01.01.2004 for the post which was advertised prior to 01.01.2004, the Old Pension Scheme would be applicable. We shall have to reproduce the relevant observations as contained in paragraphs 13 to 18 thereof which reads as under:-

“13. Having regard to the facts and circumstances of this case, where advertisements for recruitment to the posts of Sub Inspectors in CAPFs were issued in November, 2002, written examinations were held on 12.01.2003, Physical Efficiency Test had been held in or before April, 2003, and the petitioners appeared before the Medical Board between April, 2003, to June, 2003, and declared fit upon medical re-examination by Review Medical Board in December, 2003, it would be grossly unjust and arbitrary to deny the petitioners the benefit of the Old Pension Scheme, applicable at the time when the posts were advertised, only because of the fortuitous circumstance of their joining service after the enforcement of the New Pension Scheme, for reasons not attributable to them.

14. As observed above, the authorities concerned took six months' time to decide the appeal against the decision of the Medical Board, declaring the petitioners medically unfit. The petitioners were found fit by other Medical institutions of repute and ultimately found fit by a Review Medical Board constituted by the respondent authorities themselves on 28.12.2003. The respondent authorities unnecessarily delayed constitution of a Review Medical Board. Had the respondent authorities and in particular Staff Selection Commission acted with diligence, the petitioners could have been appointed within 31.12.2003.

15. The advertisements were for appointment of Sub Inspectors to Central Armed Police Forces including CRPF,

ITBP and BSF. A common entrance examination was held for all the services. However, services were allotted having regard to the merit position of the candidates, as also the option exercised by them.

16. *The differentiation between Sub Inspectors who applied pursuant to a common advertisement and were selected after going through a common selection process but appointed to different armed forces, on the basis of a notification issued long after commencement of the selection process, depending on the fortuitous event of the date of joining service is arbitrary, discriminatory and violative.*

17. *Had the petitioners and others, who opted for the Border Security Force, known that by opting for the Border Security Force, they would have been denied the benefit of the Old Pension Scheme, they would perhaps have not opted for the Border Security Force.*

18. *In our view, basic terms and conditions of service, such as the right to receive pension upon superannuation, as applicable at the time of notification of the posts, cannot later be altered to the prejudice of the incumbents to the post, after commencement of the selection process.”*

14. The same question again came up for consideration before the learned Delhi High Court in ***W.P. (C) No. 756 of 2020***, in case title ***Dr. Davinder Singh Brar v. Union of India and others***, reported in ***(2020) SCC Online Del 2771*** decided on 28.01.2020 (Annexure-8) and again the very same view was reiterated that once a candidate got selected in pursuance to an advertisement issued prior to 01.01.2004 i.e. the date when the new defined Contributory Pension Scheme has come into being and even selection was made prior to the said date, merely issuance of appointment letter after the date when the new Contributory Pension Scheme came into being,

will not take away the right of the appointee to be governed under the Old Pension Scheme.

15. The judgment in ***Dr. Davinder Singh Brar (supra)*** was challenged before the Hon'ble Supreme Court of India by the Government in **SLP (C) No. 173 of 2021** titled ***Union of India & Ors. v. Dr. Davinder Singh Brar*** and the view of the learned Delhi High Court was upheld by the Hon'ble Supreme Court of India and the Special Leave Petition was dismissed on 04.02.2011.

16. Similar reiteration of law can be found in the following judgments:-

(i) Judgment rendered by the learned Allahabad High Court in ***Nirupama Malviya v. State of UP, (2023) SCC Online All 4052,***

(ii) Judgment rendered by the learned Madras High Court in ***Savarana Bose v. Government of Tamil Nadu, WP (MD) No. 1630 of 2023,***

(iii) Judgment rendered by the learned Punjab and Haryana High Court in ***W.P. No. 1804 of 2018, Hitesh Kumar and others v. State of Haryana,***

(iv) Judgment rendered by the learned High Court of judicature at Bombay in ***W.P. No. 2270 of 2021, Khilari Rajendra Eknath v. State of Maharashtra,***

(v) Judgment of the learned Punjab & Haryana High Court in ***CWP No. 9893 of 2019, Sheeru v. State of Punjab and another,***

(vi) Judgment of the learned Delhi High Court in ***W.P. (C) No. 11169 of 2019, Chander Veer Singh and others v. Union of India and others,*** decided on 16.12.2019, wherein it was clearly laid down that if the advertisement relates back to the year 2003, the benefits accruing out of it i.e. the Old Pension Scheme will be extended to the employees whose process of appointment got delayed because of the office.

(vii) The judgment was affirmed by the Hon'ble Supreme Court in ***S.L.P. (C) No. 9950 of 2020, Union of India and others v. Chander Veer Singh and others***, decided on 16.04.2021.

(viii) The judgment of the Delhi High Court in ***W.P. (C) No.13129 of 2019, Niraj Kumar Singh and others v. Union of India and others***, decided on 13.12.2019,

(ix) The Judgment in ***W.P. (C) No. 1451 of 2021 and C.M. Application Nos. 4168-69 of 2021, Ramniwas and others v. Union of India and others***, decided on 04.02.2021.

17. Appraisal of all these judgments goes to show that the benefit of Old Pension Scheme will have to be given to those employees, whose advertisement was issued prior to 01.01.2004.

18. In view of the settled law, the question, as formulated above can conveniently be answered in the following manner:-

Where the advertisement has been issued prior to 01.01.2004, then the appointee, even if appointed after 01.01.2004, would be governed by the Old Pension Scheme, then in this case, the New Contributory Pension Scheme which came into existence only from 01.01.2004 cannot be made applicable to such appointees who shall continue to be governed by law that existed at the relevant time and in the instant case, the Old Pension Scheme.

19. In addition to the above, it also needs to be noticed that in the advertisement, copy whereof has been annexed as Annexure-A/1, it is clearly provided that 5 posts, so advertised including the post of Senior Medical Officer, would carry allowance, Medical, LTC benefits and GPF-cum-Pension benefits as are applicable to the Indian School of Mines, Dhanbad. If essentially, the appointment of the respondent was to be governed by the condition, as it is more than

settled that the advertisement is sacrosanct and binding on both the parties.

20. In view of the aforesaid discussion and for the reasons recorded, we find no merit in this appeal. Accordingly, this appeal is dismissed.

21. Pending application(s), if any, also stand disposed of.

(Tarlok Singh Chauhan, C.J.)

(Rajesh Shankar, J.)

18.09.2025

A.F.R.

APK