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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 1598/2019, CM APPL. 30333/2019 -Dismissal of Writ &
CM APPL. 13921/2020 -Disposal by Petr.

G.M. SAMPATH KUMAR

..... Petitioner

Through: None.

versus

UNION OF INDIA & ANR

..... Respondent

Through: Mr. Anurag Ahluwalia, CGSC for R-
1 & 2.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

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15.01.2024

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 04.12.2018 passed by the learned Central Administrative Tribunal in O.A. No.1252/2017. Vide the impugned order, the learned Tribunal has rejected the claim of the petitioner for being considered under the CSS (Pension) Rules, 1972 (commonly known as the Old Pension Scheme) by upholding the respondent's decision to apply the National Pension System (commonly known as the New Pension Scheme) to the petitioner.
2. Even though none appears for the petitioner, learned counsel for the respondents submits that taking into account that the post of Junior Technical Officer-II (Airframe) against which the petitioner was appointed on 07.07.2004 was notified in September 1999 i.e., well



before 01.01.2004, the date when the new pension scheme came into force, the petition is entitled to succeed. He submits that not only is this issue covered in favour of the petitioner by a number of decisions of this Court but even the Ministry of Personnel, Public Grievances and Pensions has, on 03.03.2023, issued an OM directing that the benefit of the Old Pension Scheme be extended to all those central government employees, who had been appointed against posts which were advertised or notified before 01.01.2004.

3. He further submits that in accordance with the OM issued by the Ministry of Personnel, Public Grievances and Pensions, a decision to extend the benefits of the Old Pension Scheme to the petitioner had already been taken. He, however, submits that the actual benefits accruing to the petitioner under the Old Pension Scheme are yet to be calculated and released to petitioner.
4. In the light of this fair stand taken by the respondents, and having perused the OM dated 03.03.2023, para 4 whereof reads as under, we are of the considered view that the petitioner is entitled to benefit of the Old Pension Scheme.

“4. 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.”

5. For the aforesaid reasons, the writ petition is allowed by setting aside the impugned order dated 04.12.2018 and directing that the petitioner would be entitled to be covered under the Old Pension Scheme from the date of his retirement. The actual benefits payable to the petitioner will be worked out and released, within twelve weeks, after making necessary adjustments of the amount, if any, already released to him.
6. The writ petition, alongwith all pending applications, is disposed of in the aforesaid terms.

REKHA PALLI, J

TUSHAR RAO GEDELA, J

JANUARY 15, 2024

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