

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9489 of 2024

1. The Union of India through the Secretary, Ministry of Health and Family Welfare, CHS Division, Nirman Bhawan, New Delhi-110011.
2. The Additional Secretary cum Director General, Central Government Health Scheme (CGHS), Ministry of Health and Family Welfare, CHS Division, Nirman Bhawan, New Delhi-110011.
3. The Director General, Central Government Health Scheme (CGHS), Ministry of Health and Family Welfare, CHS Division, Nirman Bhawan, New Delhi-110011.
4. The Additional Director, Central Government Health Scheme, Ministry of Health and Family Welfare, Government of India, 54 Chajju Bagh, Patna-800001.
5. The Pay and Accounts Officer, Central Government Health Scheme, Ministry of Health and Family Welfare, B, ESPLANADE East, 4th Floor, Kolkata-700069.
6. The Senior Accounts Officer, Office of the Pay and Accounts Officer, Central Government Health Scheme, Ministry of India, B, ESPLANADE East, 4th Floor, Kolkata-700069.

... .. Petitioner/s

Versus

Dr. Rakesh Kumar son of Late Lakshmi Mahto, Medical Special GR.III, C.G.H.S., Ministry of Health and Family Welfare, Government of India, Budh Marg, Patna-800001 (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Anshay Bahadur Mathur, Advocate (CGC)
For the Respondent/s : Mr. S.K. Dikshit, Advocate

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA)

Date : 10-10-2025

Heard Mr. Anshay Bahadur Mathur, learned counsel
for the petitioners (CGC) and Mr. S.K. Dikshit, learned counsel
for the sole respondent.

2. The present writ petition has been filed for
quashing the order dated 31.07.2023 passed by the Central
Administrative Tribunal (hereinafter referred as 'CAT'), Patna



in O.A No.- 050/00605/2019, whereby and whereunder the learned CAT has wrongly interfered with the order dated 15.05.2019 and allow the OA Application of the respondent/applicant.

3. The learned CAT has also directed the petitioners to treat the respondent/applicant under the old pension scheme, to allot him GPF account and to count his past service rendered under the State of Bihar for the purpose of pension and other consequential benefits. Apart from the aforesaid, the learned CAT has also directed the petitioners for adjustment of respondent/applicant's contribution to NPS (New Pension Scheme), if any, shall be made in terms of OM28/30/2004-P&PW(B) dated 11.06.2020.

4. The brief fact of the case is that the respondent/applicant was initially appointed as Medical Officer in the Bihar State Health Service on 02.09.1997 and subsequently got promoted on the post of Senior Medical Officer in the State of Bihar. The Union Public Service Commission, New Delhi issued an advertisement no. 14 of 2014 in Employment News dated 23-29.08.2014 for appointment against various post including the 15 posts of Specialist Grade III (Medicine) in the Ministry of Health and Family Welfare



which speaks about the persons who are already employed in government service or any other service and under the said clause, such persons have to inform in writing to their head of office/department that they have applied for the selection. Respondent/applicant has sent information in writing to the Principal Secretary, Department of Health, Government of Bihar in terms of Clause 9 (a) of the aforesaid advertisement. The respondent/applicant was finally selected and appointed against the post of Specialist Grade III (Medicine) in Central Government Health Scheme (CGHS) vide appointment letter dated 03.06.2015. But in Clause VII of the said appointment letter it has been mentioned that the appointment is after 01.01.2004, hence, the respondent/applicant will be governed with New Pension Scheme in place of Old Pension Scheme.

5. Learned counsel for the petitioners submits that the learned CAT has committed a mistake and has passed illegal and wrong order in the eye of the law. In view of the fact that the impugned order was passed on the basis of the OM dated 11.06.2020 by which a one time benefit for counting of past service under old pension scheme during 01.01.2004 to 28.10.2009 has been given to the employee. But in the present case, the learned CAT has failed to appreciate the fact that one



time exception cannot be a rule and the period under consideration in the aforesaid OM was 01.01.2004 to 28.10.2009 just after the rider of 31.12.2003 was imposed. He further submits that in the present case the period for consideration starts from 16.08.2015 i.e., after more than 10 years of the OM dated 26.07.2005. The main consideration in the present case is that whether the respondent/applicant is governed by the old pension scheme or the new pension scheme?

6. Learned counsel for the petitioners submits that the respondent/applicant has also applied for new pension scheme under the National Pension System (NPS) and filled up subscriber registration form on 02.02.2022 through proper channel. In pursuance of the said application, the competent authority has accepted the request of the respondent/applicant and allowed him Permanent Retirement Account Number (PRAN) vide letter dated 23.06.2022. Thereafter, the authorities have started deducting NPS contribution from the salary of the respondent/applicant under the new pension scheme. It appears from the aforesaid that the respondent/applicant has willingly accepted the new pension scheme even after making claim for the old pension scheme vide letter dated 19.08.2015. He further



submits that the learned CAT has ignored the aforesaid facts and allowed the OA application in favour of the respondent/applicant.

7. Learned counsel for the respondent/applicant submits that from perusal of the appointment letter of the respondent/applicant dated 03.06.2015, it appears from Clause VII that the appointment is after 01.01.2004 governed with new pension scheme in place of old pension scheme. He further submits that the aforesaid clause in the appointment letter of the respondent/applicant is contrary to Rule 26(2) of CCS (Pension) Rules, 1972 read with Government of India Decision No. 1 below Rule 26(2) of CCS (Pension) Rules, 1972. In fact, the respondent/applicant was already in pensional service under the State of Bihar and appointed in Central Government through proper channel and upon his selection in Central Government, he joined in CGS after a technical resignation.

8. The Rule 26 of CCS (Pension) Rules, 1972 along with Government of India Decision No. 1 is reproduced hereinbelow:-

“26. Forfeiture of service on resignation

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail



forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(3) Interruption in service in a case falling under sub- rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer; shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.

(4) The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely :-

(i) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation ;

(ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper ;

(iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days ;

(iv) that the post, which was vacated by the Government servant on the



acceptance of his resignation or any other comparable post, is available.

(5) Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(6) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.

¹[(7) A resignation submitted for the purpose of Rule 37 shall not entail forfeiture of past service under the Government.]

GOVERNMENT OF INDIA'S DECISIONS

(1) When resignation a technical formality and when it subsists. -
A Government servant intending to apply for a post or posts outside his parent office/department under the Government of India should have his application forwarded through the competent authority under whom he was serving at the time of applying for the post. Such an authority should either forward the application or withhold it according as the exigencies of public service may indicate but it should not forward the application conditionally, for example, that in the event of the applicant coming out successful, he will the required to resign his post before taking up the new one. Once the application has been forwarded unconditionally and the person



concerned is offered the post applied for, he should be relieved of his duties to join the new post as a matter of course and the question of his resigning the post held by him in such circumstances should not arise. Accordingly the amended article is intended to cover the cases where even though the applications were forwarded by the competent authority, the applicant had been asked for one reason or the other to resign his post before taking up the new one. The above position holds good whether the Government servant held the post in permanent or temporary capacity, before resigning the post.

Situations may arise where the application of a Government servant was not forwarded and the Government servant resigned his appointment of his own volition with a view to his taking up the new post or where it was not possible to forward his application in the public interest but the Government servant had volunteered to resign his post or where the conditions of service in an office demand as a matter of policy that the Government servant should resign his post in the event of his taking up another post outside. In all such cases, it has been held that resignation of public service will subsist and entail forfeiture of past service.

It has been decided that in cases where Government servants apply for posts in the same or other departments through proper channel and on selection, they are asked to resign the previous posts for administrative reasons, the benefit of past service may, if otherwise admissible under rules, be given for purposes of fixation of pay in the new post treating the resignation as a 'technical formality'. The pay in such cases may be fixed under FR 27."

9. Learned counsel for the respondent/applicant



submits that from perusal of the Government of India Decision No. 1 it appears that *“It has been decided that in cases where Government servants apply for posts in the same or other departments through proper channel and on selection, they are asked to resign the previous posts for administrative reasons, the benefit of past service may, if otherwise admissible under rules, be given for purposes of fixation of pay in the new post treating the resignation as a ‘technical formality’. The pay in such cases may be fixed under FR 27.”*

10. Apart from the aforesaid, recently the Department of Personnel, Public Grievances and Pension has issued OM, No. 28/30/2004-P&PW(B) dated 11th June, 2020. Para 8 of OM stipulates *“In some cases, due to non-availability of benefit of counting of past services under the old pension system during 01.01.2004 to 28.10.2009, the employees of State Government/State Autonomous bodies etc. may have been compelled to take voluntary retirement before joining pensionable Central Government Department/Central Autonomous bodies after 01.01.2004 but before 28.10.2009. It has been decided that ‘voluntary retirement’ of such employees may be treated as ‘technical resignation’ and the benefit of provisions of para 5 to para 7 above may also be extended to*



them subject to fulfillment of all other conditions for counting of service.”

11. We have heard learned counsel for the parties and perused the materials available on records and we have come to the conclusion that the learned CAT has rightly allowed the OA in favour of the respondent/applicant taking into consideration of the aforesaid as well as OM No. 28/30/2004 dated 11.06.2020 particularly paragraph no. 8 of the said OM and the respondent/applicant’s resignation was a technical resignation and in light of the paragraph no. 8 of the aforesaid OM, the respondent/applicant is entitled under the old pension scheme.

12. Hence, we find no infirmity or illegality in the order impugned and accordingly, the present writ petition stands dismissed.

13. Pending application(s), if any, shall stand disposed of.

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

Vanisha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.11.2025
Transmission Date	NA

