

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2026:PHHC:018024-DB



LPA-1318-2016 (O&M)
Date of Decision: 05.02.2026

Avtar Singh

...Appellant

Vs.

National Institute of Pharmaceutical Education and Research and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE ROHIT KAPOOR

Present: Mr. K.L. Singla, Advocate for the appellant.

Mr. Alankrit Bhardwaj, Advocate for respondent No.1.

Mr. Parven Chugh, Advocate for respondent No.2.

ASHWANI KUMAR MISHRA, J. (Oral)

1. This Letters Patent Appeal seeks to challenge the judgment of the learned Single Judge dated 04.04.2014, whereby the claim of the appellant for pension and gratuity, has been declined.

2. It is not in dispute that the appellant was initially employed with National Building Construction Corporation (for short 'NBCC') as Junior Engineer on 28.04.1977. He was then promoted to the post of Assistant Engineer on 06.12.1985. The appellant was further promoted as Resident Engineer w.e.f. 24.04.1998. It transpires that a post of Executive Engineer was advertised by the respondent – NIPER in 2001 and the appellant applied against such vacancy. The parent department i.e. NBCC gave no objection

certificate and allowed the appellant to appear in the recruitment process. The appellant was ultimately appointed on deputation as Executive Engineer on 26.12.2001 in NIPER. Thereafter, the appellant has been absorbed in the employment of NIPER on 22.12.2004. It is thereafter that the appellant claimed right to convert from CPF to OPS. The respondents have denied such benefit on the ground that the entry into service being after 01.01.2004, the appellant had no right to claim switch over to OPS from CPF.

3. The decision of the respondent – employer was put to challenge in the writ petition which has since been dismissed. The benefit of switch over from CPF to OPS is based upon an office memorandum dated 29.08.1984. This office memorandum of 1984 was done away by a subsequent office memorandum dated 26.07.2005. However, a fresh office memorandum came to be issued on 28.10.2009, whereby the previous office memorandum dated 29.08.1984, has been revived in certain exigencies. Relevant portion of office memorandum dated 28.10.2009, is reproduced as under:

“2 (c) The pre-existing arrangement of mobility between State/Central Autonomous Body to Central/State Government and between autonomous bodies that were governed by old pension scheme in force upto 31.12.2003, vide No.28/10/84-P&PW dated 07.02.1986 and OM No.28/10/84-Pension unit dated 29.08.1984, stand restored although those under CPF etc. will not be allowed entry into the old pension scheme on appointments from 01.01.2004.”

4. The above office memorandum dated 28.10.2009 would make it apparent that the benefit of OPS vide order dated 29.08.1984, would stand restored for those who were under CPF scheme and have been appointed after 01.01.2004. In the present case, the appointment of the appellant is after

01.01.2004. Learned Single Judge, therefore, has taken a view that it being a case of fresh appointment after 01.01.2004, the right of switching over from CPF claim to OPS would not be admissible to the appellant.

5. Learned counsel for the appellant places reliance on the judgment of the Gauhati High Court in CW (Civil) No.4714 of 2011, titled as '**Bedanidhi Upadhyaya v. Union Of India and others**'. Reliance has been placed on the observations of the Court in paragraphs No.16 and 19, which are reproduced hereinafter:-

“The above position of law is further clarified by the decision, in Union of India & Ors v. Parul Debnath & Ors., reported in (2009) 14 SCC 173, wherein the Supreme Court has pointed out that the direction from the Tribunal as well as the High Court, in respect of the respondent (i.e., Parul Debnath), was for absorption in the regular establishment of the Andaman and Nicobar Islands and no new appointment was required to be made. The decision, in Parul Debnath’s case (supra), further clarifies that absorption is not a new appointment and a Government servant, on his absorption, does not cease to be a Government servant and he has to be treated as Government servant before as well as after his absorption inasmuch as a Government servant, on his absorption, does not lose the nature of his earlier appointment as a government servant.

“In the backdrop of the resultant effect of absorption of the petitioner, when we revert to the New Pension Scheme, we notice that the new Pension Scheme has come into force with effect from 01.01.2004 and is applicable to all new entrants to the Central Government service except to Armed Forces joining Govt. service on or after 01.01.2004. The New Pension Scheme cannot, therefore, be applied to a person, who is not a new entrant to the Central Government service inasmuch as Clause 4 of the New Pension Scheme, when read and re-read, makes it abundantly clear that the new Pension Scheme would be

applicable to a new Government servant, i.e., a person, who was not a Government servant and who joins the Government service on or after 01.01.2004. As the petitioner could not have been regarded as a new Government servant, on his absorption, in NERFMTTI, with effect from 03.08.2004, the question of resorting to, or applying, the New Pension Scheme to the case of the petitioner did not arise at all.”

6. The submissions advanced on behalf of the appellant is opposed by the counsel for the respondent – NIPER who points out that the facts of the case before the Gauhati High Court were different in which the offer of appointment itself contained a promise that if the applicant makes an application for switch over from CPF to OPS then the same shall be considered. Para No.2 of the judgment of the Guhati High Court noticing such facts is reproduced hereinafter:-

“2. While the petitioner had been working as LDC/on deputation/in NERFMTTI, as indicated hereinbefore, the Director, NERFMTTI, offered to the petitioner, vide Memorandum, dated 26.7.2004, a permanent post of Laboratory Attendant. Clause (f) of the said Memorandum, dated 26.7.2004, containing the said offer of appointment, read as under:-

(f) Pension/Gratuity Sri B. Upadhyaya is entitled for all Pensionary benefits covered under the provision of CCS (Pension) Rules, 1972, if the option is exercised by him for pension benefit. He is suggested to submit his option either to receive CPF benefits which have accrued to him from the NERIST and start his service afresh in

Government or choose to count service rendered in that body as qualifying service for pension in Government by forgoing employer's share of CPF contributions with interest thereon, which will be paid to the concerned Government Department by NERIST. Gratuity/Leave Salary, etc., shall be regulated GCS (Pension) Rules 1972."

7. Having examined the materials placed on record, we find that the appellant was initially appointed in NBCC and had availed benefit of CPF. Pension rules were not available in respect of employees of NBCC. Pursuant to an advertisement issued by the respondent – NIPER, the appellant was initially sent on deputation in the year 2001 and he came to be ultimately absorbed in the employment of NIPER on 22.11.2004. In such circumstances, the date of entry into service for the appellant would be after 01.01.2004. Clause 'C' of the office memorandum dated 28.10.2009, clearly revives the previous policy of switch over contained in the office memorandum dated 29.08.1994 with the exception that those in CPF scheme who are appointed after 01.01.2004, will not be given entry into the OPS scheme. The case of the present appellant clearly falls in the exception of the office memorandum dated 28.10.2009. Even otherwise, we find that the appellant had superannuated in the year 2012. Much water has flown since then. At this late stage and in view of the specific provisions of the applicable office memorandum, no right can be conferred on the appellant to claim switch over to OPS.

8. Learned counsel for the appellant also places reliance on the judgment of the Hon'ble Supreme Court in **Roop Lal and another vs. Ltd.**

Governor of Delhi and other, 2000 (1) SCC 644. The Hon'ble Supreme Court in para No.15, had taken note of the previous judgment in the case of K. **Madhavan and Another v. Union of India and Others** (1987) 4 SCC 566, which was in the context of granting of benefit of past service for the purposes of determination of seniority. This judgment apparently will have no applicability to the facts of the present case.

9. In light of the findings recorded hereinabove, we find no infirmity in the judgment passed by the learned Single Judge warranting interference. The appeal, therefore, fails and is dismissed.

10. All pending misc. application(s), if any, also stand disposed of.

(ASHWANI KUMAR MISHRA)
JUDGE

(ROHIT KAPOOR)
JUDGE

05.02.2026
rajesh

1. Whether speaking/reasoned?	:	Yes/No
2. Whether reportable?	:	Yes/No