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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 09.09.2025

+ **W.P.(C) 8833/2020**

DR. ANUJ KUMAR AND ORS.

.....Petitioners

Through: Mr. Ankur Chhibber,
Mr. Anshuman Mehrotra,
Ms. Muskan Dutta, Mr. Prahil
Sharma, Mr. Arjun Panwar and
Mr. Amrit Koul, Advs.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Mr. Rakesh Kumar, CGSC
Ms. Sonam Anand and
Mr. Haskar Kumar, Adv. for
ESIC

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed challenging the Order dated 26.11.2019 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal') in O.A. No. 2513/2017, titled ***Dr. Anuj Kumar and Ors. v. Ministry of Labour***, whereby the said O.A. filed by the petitioners herein was dismissed.

2. The petitioners had filed the above O.A. contending therein that, pursuant to an advertisement dated 15.02.2003, and on being selected, they had joined the services of the respondent No. 2, that is,



the Employees' State Insurance Corporation, after 01.01.2004. They submitted that it was only due to the negligence and inaction of the respondents that the appointment letters of the petitioners were issued after 01.01.2004. The petitioners, therefore, claimed that they ought to be covered under the Old Pension Scheme, which was in force until 22.12.2003, when the New Contributory Pension Scheme came into effect.

3. The learned Tribunal, as noted hereinabove, did not find merit in the aforesaid contention and dismissed the O.A..

4. During the pendency of the present petition, however, the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners' Welfare, issued an Office Memorandum dated 03.03.2023, extending the benefit of exercising an option to shift to the Old Pension Scheme in cases where the advertisement/notification for recruitment/appointment had been issued prior to the date of notification of the National Pension System, that is, 22.12.2003.

5. The petitioners contended that since the advertisement under which they had been recruited was issued prior to the said date, they were entitled to exercise the one-time option.

6. The respondent no. 2 has filed an affidavit dated 09.07.2025, setting out the details of the examination of the petitioners' claim by it, as well as by the Ministry of Labour and the Ministry of Finance.

We quote the relevant extracts from the affidavit as under:-

"4. I state that in terms of Regulation 4 (read with the First & Second Schedule) of the ESIC (Staff and Conditions of Service) Regulations,



2023 the Appointing Authority for the Insurance Medical Officers, Grade-II is the Chairman of the ESIC Corporation, who is the Hon'ble Minister of Labour and Employment, Govt. of India.

*The ESIC (Staff and Conditions of Service) Regulations, 1959 are superseded by the ESIC (Staff and Conditions of Service) Regulations, 2023. The True Copy of the ESIC (Staff and Conditions of Service) Regulations, 2023 is annexed as **ANNEXURE A-1**.*

5. Through the recruitment process under the advertisement dated 15.02.2003, the Petitioners were appointed in March/April, 2004 (pdf 166). In view of the fact that the Petitioners were appointed after the cut-of date of 01.01.2004, the New Pension Scheme (NPS) was made applicable to them. The Petitioners filed OA No. 2513/2017 (pdf164) before the Hon'ble CAT, Principal Bench, New Delhi seeking directions that they be held to be covered by the old pension scheme on the ground that the recruitment process commenced prior to 22.12.2003, The Hon'ble Tribunal dismissed the Petitioner's OA by way of the impugned judgment (pdf 56), which is under challenge in the present writ petition.

6. I state that there a large number of court cases were filed by several government employees (appointed post 01.01.2004) seeking the benefit of the old pension scheme on different grounds. This led in many conflicting judgments by several Tribunals and Hon'ble High Court.

7. In order to put to resolve all these issues, the Department of Personnel & Training (DoP&T), Ministry of Personnel, Public Grievances and Pensions, Union of India issued OM dated 17.01.2030 giving the benefit of opting for the old pension scheme to those employees with respect to whom the selection process was finalised prior to 22.12.2003.

8. Subsequently, the DoP&T, Ministry of Personnel, Public Grievances and Pension,



*Union of India issued another OM dated 03.03.2023 thereby extending the option to opt for the old pension scheme even in those case where the recruitment process was started/commenced prior to 22.12.2003 (para4). As per para 7 of the said OM, the matter as regards the coverage of the old pension scheme (based on the option) is required to be placed before the Appointing Authority of the posts for which the option is being exercised. True Copy of the OM dated 03.03.2023 issued by the DoP&T Ministry of Personnel, Public Grievances and Pensions, Union of India is annexed as **ANNEXURE A-2.***

*9. The ESIC issued Office Memorandum dated 12.04.2023 formally adopting the DoP&T OM dated 03.03.2023. Copy of the Office Memorandum dated 12.04.2023 issued by the ESIC is annexed on **ANNEXURE A-3.***

10. I state that since the Competent/Appointing Authority with respect to Group A officers in the ESIC is the Chairman of the Corporation, the ESIC was required to seek sanction from the Chairman, Corporation being Hon'ble Minister, Labour & Employment, Govt. of India (in terms of para 7 of the OM dated 03.03.2013) for enabling it in extend the old pension scheme to Group A officers whose recruitment commenced prior to 22.12.2003.

11. The ESI Corporation accordingly sought sanction in the regard from the Ministry of Labour & Employment, Govt. of India vide e-File No Z 11011/26/2073-MED-IV (Computer No. 439279) This includes the Petitioners before this Hon'ble Court a well. That ESIC's proposal/ request for sanction was in turn referred by the Ministry of Labour & Employment to the Department of Expenditure, Ministry of Finance, Union of India.

12. However, the Department of Expenditure has by way of ID Note No.24(4)/EV/2020 dated 07.03.2024 raised certain queries and sought an explanation from the Ministry of



*Labour & Employment as to how the DoP&T OMs dated 17.02.20020 03.03.2023 and the pension scheme itself are applicable to the ESIC. Ministry of Labour & Employment vide letter dated 14.03.2024 referred the same ESIC for necessary action. True Copy of the ID Note Ne 24(4)/EV/2020 07.03.2004 issued by the Department of Expenditure, Union of India is annexed as **ANNEXURE A-4** and the True Copy of the letter dated 14.03.2024 of the Ministry of Labour & Employment addressed to the ESIC is annexed as **ANNEXURE A-5**.*

*13. I state that the ESIC submitted a detail response vide dated 22.04.2024 to the Ministry of Labour & Employment with respect to coverage of ESI employees under the pension scheme and the OMs dated 17.02.2020 and 03.03.2023 in response to the Department of Expenditure's note dated 07.03.2024. True Copy of the detailed response dated 22.04.2024 given by the ESIC to the Ministry of Labour in its letter dated 14.03.2024 is annexed as **ANNEXURE A-6**.*

14. I further state that the matter was under consideration with the Department of Expenditure, Ministry of Finance, and which has by way of letter/decision dated 23.12.2024 has reiterated its earlier view and decision that the DoP&T Office Memorandums dated 17.02.2020 and 03.03.2023 are not applicable to the Employees' State Insurance Corporation (ESIC) and that the said OMs are only applicable to Central Government employees. The Department of Expenditure's decision dated 23.12.2024 has been communicated to the ESIC by way of letter dated 09.01.2024 issued by the Ministry of Labour & Employment.

*True Copy of the letter dated 09.01.2024 issued by the Ministry of Labour & Employment enclosing Department of Expenditure's decision dated 23.12.2024 is annexed as **Annexure A-7**.*

15. I state that the ESIC pursued this matter further with the Ministry of Labour &



*Employment for reviewing the Department of Expenditure's decision dated 23.12.2024. However, the Ministry of Labour has vide its letter dated 07.02.2020 and 30.03.2023 stated that the matter has already been examined by the Department of Expenditure and clarified that DoP&T OMs dated 17.02.2020 and 03.03.2023 are applicable only to the Central Government employees not to the employees of ESIC. True Copy of the letter 30.04.2025 issued by the Ministry of Labour is annexed as **ANNEXURE A-8.***

16. I state that in view of the aforementioned stand and decision taken by the Ministry of Finance and Ministry of Labour & Employment, Union of India holding that the DoP&T OMs dated 17.02.2020 and 03.03.2023 am not applicable to the ESIC, the Department is unable to grant the benefit of opting for the old pension scheme in the present Petitioners."

7. From a reading of the above, and it is the admitted case that the advertisement pursuant to which the petitioners were appointed by the respondent no. 2, was issued on 15.02.2003, that is, prior to 22.12.2003, the cut-off date for the introduction of the National Pension Scheme. It is also admitted that the respondent no. 2 has also adopted the office Memorandum dated 03.03.2023 *vide* its Office Memorandum dated 12.04.2023. In the above light, the respondent no.2 sought the necessary approvals and sanctions for implementing the OM dated 03.03.2023, however, the Department of Expenditure, the Ministry of Finance, by its decision dated 23.12.2024, stated that the Office Memorandum dated 03.03.2023 was not applicable to the respondent no. 2. We reproduce the said communication as under:

"Subject: Coverage under CCS (Pension)



***Rules, in place of National Pension System
for officers of ESIC-reg.***

Ministry of Labour & Employment (MoL&E) may please refer to their proposal recorded in their e-File No.A-38020/03/2023-SS-I regarding the extension of DoP&PW's OM dated 03.03.2023 in respect of employees of ESIC.

2. The proposal has been examined in this Department and it is reiterated that DoP&PW's OM dated 03.03.2023 is not applicable to ESIC employees. Further, MoLE is informed as under:

- The DoP&PW OM dated 17.02.2020 & 03.03.2023 applies solely to Central Government employees.*

- Any significant policy decision involving financial implication or deviation from the existing rules requires prior approval from the parent department and Ministry of Finance. This ensures adherence to government norms and prevent financial or legal complications.*

3. This issues with the approval of the Competent Authority."

8. The above communication states that the OM dated 03.03.2023 is not applicable to ESIC employees and applies only to the Central Government Employees. However, it fails to note that the ESIC has adopted the OM dated 03.03.2023 vide its OM dated 12.04.2023. In addition, it does not even advert to the detailed justification furnished by the respondent no. 2 in its communication dated 22.04.2024 to the various queries raised by the Ministry of



Finance. In the said communication, the respondent no. 2 had highlighted that, in terms of Section 17 of the Employees' State Insurance Act, 1948 ('ESI Act'), the method of recruitment, salary, allowances, and other conditions of service of its staff are to be specified by regulations made by the Corporation. It was further explained that Regulation 8(1) of the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 stipulates that the rules laid down in the Central Civil Services (Pension) Rules, 1972, as amended from time to time, are applicable to all employees of ESIC, inter alia, for pensionary benefits etc. It is in exercise of the said powers that the National Pension Scheme was introduced by the respondent no. 2 with effect from 22.12.2003 and made applicable to the petitioners. The respondent no. 2 has also adopted the Office Memorandum dated 03.03.2023.

9. We, therefore, find no reason why the benefit of the one-time option under the said Office Memorandum could not have been extended to the petitioners and other employees of the respondent no. 2, particularly when the recruitment process in respect of the petitioners had been initiated prior to the cut-off date, that is, through an advertisement dated 15.02.2003.

10. Accordingly, the present petition is disposed of by setting aside the Order dated 26.11.2019 passed by the learned Tribunal and directing the respondent no. 2 to extend the one-time option to the petitioners and other similarly situated employees in accordance with the Office Memorandum dated 03.03.2023, as adopted by the respondent no. 2 *vide* its Office Memorandum dated 12.04.2023. The



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period for exercising such option shall be adequately fixed by the respondent no. 2 so as to make the scheme workable.

11. There shall be no orders as to costs.

NAVIN CHAWLA, J

MADHU JAIN, J

SEPTEMBER 09, 2025/ys/DG