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

Date of decision: 29.10.2025

+ W.P.(C) 10544/2023
UNION OF INDIA & ANR.Petitioners
Through: Mr. Syed Abdul Haseeb, CGSC
with Mr. Tanveer Zakri, Adv.

versus

SHRI NARENDER KUMAR YADAVRespondent
Through: Mr. D.P. Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

CM APPL. 51147/2025

1. This application has been filed seeking permission to intervene in the present petition.
2. The applicants had filed O.A. No. 2481/2023, titled ***Amardeep and Anr. vs. The Lt. Governor of Delhi and Ors.***, before the learned Central Administrative Tribunal, Principal Bench, New Delhi, which has been disposed of by the learned Tribunal *vide* its Order dated 15.05.2024, in the following terms:

“3. Taking note of the submissions, the present OA also stands disposed of in terms of the OA No. 3735/2018 subject to outcome of the decision in said Writ Petition No. 10544/2023. This disposes of the present OA with no order as to costs.”



3. The learned counsel for the applicant submits that as the O.A. filed by the applicants has been disposed of subject to the outcome of the present writ petition, the applicants have a vital stake in the outcome of the same.

4. Keeping in view the above, the learned counsel for the applicants has been heard in the Writ Petition.

5. The application is disposed of.

W.P.(C) 10544/2023 & CM APPL. 40963/2023

6. This petition has been filed, challenging the Order dated 20.03.2023 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the ‘Tribunal’), in O.A. No. 3735/2018, titled ***Sh. Narender Kumar Yadav, A.E., Group B’ v. Union of India through The Secretary & Anr.***, allowing the O.A. filed by the respondent herein with the following directions:

“8. In view of the above, the contention of the applicant for being considered under the OPS is accepted as per the Para 4 of the aforesaid OM dated 03.03.2023. The applicant may exercise his option to migrate to Old Pension Scheme. The respondents shall take appropriate action in accordance the OM dated 03.03.2023. The aforesaid exercise should be completed within 8 weeks from the date of receipt of a certified copy of this Order.”

7. A brief background of facts giving rise to the present petition are that the Central Ground Water Board (CGWB) sent an Annual Direct Recruitment Plan to the Ministry of Jal Shakti, Department of Water Resources, River Development & Ganga Rejuvenation on 08.06.2003. The Ministry in turn, on 29.10.2003, issued permission to



the CGWB to make appointment to the vacant post of Foreman.

8. The Surplus Cell (Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training, Govt of India), issued non-availability certificate dated 03.12.2003 regarding suitable candidates for appointment to the vacancy of Foreman.

9. In view of the above, the CGWB issued a letter dated 11.12.2003 to the Central Employment Exchange, asking it to nominate suitable candidates for appointment to the above posts of Foreman.

10. The Central Employment Exchange, on 17.01.2004, issued an Advertisement inviting applications for appointment to the said post, and on culmination of the recruitment process, the respondent was appointed as a direct recruit to the post of Foreman on 26.07.2004.

11. In the meantime, by a Notification dated 22.12.2003, issued by the Ministry of Finance, the New Pension Scheme (NPS) was introduced for all new recruits to the Central Government Service to come into effect from 01.01.2004. As the appointment of the respondent was post the said date, the respondent was placed under the NPS.

12. The respondent filed the above O.A. before the learned Tribunal claiming that he should be treated as falling under the Old Pension Scheme (OPS) under the Central Civil Services (Pension) Rules, 1972.

13. During the pendency of the above O.A., the Ministry of Personnel, Public Grievances & Pensions, Department of Pension and Pensioners' Welfare issued an Office Memorandum dated 03.03.2023,



which *inter alia* provided as under:

“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.”

(Emphasis supplied)

14. The respondent claimed that as the post had been notified prior to the date of notification of the NPS, that is, 22.12.2003, he was entitled to the grant of one time option for conversion to the OPS. This plea of the respondent has been accepted by the learned Tribunal in the Impugned Order.

15. The learned counsel for the petitioners, placing reliance on the Judgment of the Supreme Court in ***Tej Prakash Pathak & Ors. v. Rajasthan High Court & Ors.***, (2025) 2 SCC 1, submits that as the Advertisement for the post was issued by the Central Employment Exchange only on 17.01.2004, that is post the Notification introducing the NPS issued on 22.12.2003, the respondent was not entitled to the grant of one time option.



16. He further submits that the O.A. filed by the respondent was highly belated as the respondent had been appointed to the post of Foreman on 26.07.2004, and filed the O.A. only in the year 2018, that is with a delay of fourteen years. He submits that the O.A. was liable to be dismissed on this short ground itself.

17. On the other hand, the learned counsel for the respondent submits that the O.M. dated 03.03.2003 grants an option to a civil employee who 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*”. Placing reliance on the Judgement dated 16.09.2025 passed by the Ernakulum Bench of the learned Tribunal in a batch of OAs, including OA no. 180/101063/2018, tilted ***Seena R.S. v. Union of India and Ors.***, he submits that the words ‘advertised’ and ‘notified’ have distinct meanings and have not been used interchangeably in the O.M..

18. He submits that, as the Notification of the vacancy for Foreman had been made on 11.12.2003, that is, by a letter addressed by the CGWB to the Central Employment Exchange, the respondent was entitled to and rightly granted the option to convert to the OPS by the learned Tribunal. In support of his plea, he places reliance on Section 4 of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (hereinafter referred to as the Employment Exchange Act); O.M. dated 18.05.1998, O.M. dated 09.11.2005 and O.M. dated 13.06.2016 issued by the Department of Personnel & Training (DoP&T). He also draws our attention to a Circular dated 28.10.2003 issued by the General Manager, Ammunition Factory,



Khadki, Pune-411003; Circular dated 14.09.2003 issued by the Ordinance Factory, Chandigarh; and Circular dated 30.10.2023 issued by the Directorate of Ordinance (C & S), Department of Defence Production, Ministry of Defence, Government of India, wherein, on the basis of the notification of vacancy to the Employment Exchange being made prior to 22.12.2003, a right of exercise option to switch to OPS was granted to the employees.

19. Placing reliance on the Judgment of the Supreme Court in *Union of India & Ors. v. N. Hargopal & Ors.*, (1987) 3 SCC 308, he submits that the vacancies should be notified to the Employment Exchange, and once so done prior to 22.12.2003, the employees, though recruited later, would be entitled to exercise their one time option.

20. The learned counsel for the petitioners in rejoinder, submits that the Employment Exchange Act may not be applicable to the facts of the present case, as the recruitment was first sought from the Surplus Cell (Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training, Government of India) and that in terms of Section 3(2)(a) of the Employment Exchange Act, the same does not apply in relation to vacancies which are proposed to be filled *inter alia* by absorption of surplus staff. He submits that the learned Tribunal has not considered the issue whether the petitioner in the present case was obliged to make recruitment only through the Employment Exchange.

21. We have considered the submissions made by the learned counsels for the parties.



22. Though the O.A. filed by the respondent was on the basis that he was even otherwise entitled to be governed by the OPS, during the pendency of the O.A., the O.M. dated 03.03.2023 came to be issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners' Welfare.

23. From reading of the O.M. dated 03.03.2023, it would be apparent that a right for one time option was conferred on the Central Government civil employees, who have been appointed against a post or vacancy which was 'advertised' or 'notified' for recruitment/appointment prior to the date of notification of NPS, that is, 22.12.2003, but who were covered under the NPS on joining service on or after 01.01.2004.

24. In the present petition, the scope of the term 'advertised/notified' has to be considered. The Central Government has in our view intentionally used the two distinct terms, as they have separate legal connotations.

25. In the present case, it is admitted that the Advertisement pursuant to which the respondent was appointed to the post of Foreman with the CGWB, was issued by the Employment Exchange on 17.01.2004, however, this would not be the end of matter, as the same covers only the term 'advertised' used in the O.M. dated 03.03.2023.

26. The CGWB, by a letter dated 11.12.2003, had called upon the Central Employment Exchange to nominate suitable candidates for the said post.

27. Section 4 of the Employment Exchange Act reads as under:



“4. Notification of vacancies to employment exchanges.—

(1) After the commencement of this Act in any State or area thereof, the employer in every establishment in public sector in that State or area shall, before filling up any vacancy in any employment in that establishment, notify that vacancy to such employment exchanges as may be prescribed.

(2) The appropriate Government may, by notification in the Official Gazette, require that from such date as may be specified in the notification, the employer in every establishment in private sector or every establishment pertaining to any class or category of establishments in private sector shall, before filling up any vacancy in any employment in that establishment, notify that vacancy to such employment exchanges as may be prescribed, and the employer shall thereupon comply with such requisition.

(3) The manner in which the vacancies referred to in sub-section (1) or sub-section (2) shall be notified to the employment exchanges and the particulars of employments in which such vacancies have occurred or are about to occur shall be such as may be prescribed.

(4) Nothing in sub-sections (1) and (2) shall be deemed to impose any obligation upon any employer to recruit any person through the employment exchange to fill any vacancy merely because that vacancy has been notified under any of those sub-sections.”

(Emphasis supplied)

28. A reading of the above would show that the notification of the vacancy in a post is done by the employer by informing the vacancy to the Employment Exchange. Therefore, when a requisition/notification



is sent by the establishment to the Employment Exchange is the date when the vacancy is 'notified' for the purposes of O.M. dated 03.03.2023.

29. In the present case, the said notification, therefore, took place on 11.12.2003, that is, prior to the O.M. dated 22.12.2003 by which the NPS was directed to be introduced with effect from 01.01.2004.

30. In our view, therefore, the learned Tribunal has rightly held that the one time option to convert to the OPS had to be granted to the respondent, as the vacancy had been notified prior to 22.12.2003, the cut-off date prescribed in the O.M. dated 03.03.2003.

31. As far as the plea of the counsel for the petitioners that the petitioner may not be compulsorily covered by the Employment Exchange Act for the vacancy in question, in our view, we need not go deeper into it. The fact remains that the petitioner did notify the vacancy to the Employment Exchange prior to 22.12.2003; under what circumstances the notification was made is irrelevant for the application of the O.M. dated 03.03.2023.

32. On the plea of delay in filing of the O.A., while this may have been relevant to the original O.A. filed by the respondent, as noted hereinabove, during the pendency of the O.A., the O.M. dated 03.03.2023 came to be issued by the DOP&T. The learned Tribunal instead of calling upon the respondent to file a fresh O.A. to claim benefit under the said O.M., has proceeded to consider the claim of the respondent under the said O.M.. We find no infirmity in the same and also agree with the final conclusion of the learned Tribunal in that regard. As far as the claim of the respondent for a one time option



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under O.M. dated 03.03.2023, the same was within time; in fact, the O.A. was pending adjudication as on that day before the learned Tribunal.

33. For the reasons stated hereinabove, we find no infirmity in the Impugned Order passed by the learned Tribunal. The writ petition is accordingly dismissed. There shall be no orders as to costs.

NAVIN CHAWLA, J

MADHU JAIN, J

OCTOBER 29, 2025/b/k/ik