

**BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY
COMMISSION**

**CORAM: Sh. Devendra Kumar Sharma, Chairman
Sh. Yashwant Singh Chogal, Member (Law)**

Date of Order: 22.01.2025

**In the matter of:- Finalization of the Himachal Pradesh Electricity
Regulatory Commission (Terms and Conditions of
Service of Staff) (Fourth Amendment) Regulations,
2024.**

ORDER

The Himachal Pradesh Electricity Regulatory Commission notified the HPERC (Terms and Conditions of Service of Staff) Regulations, 2013 on 18th April, 2013, published in the Rajpatra, Himachal Pradesh on 22nd April, 2013 which were amended from time to time (hereinafter referred to as 'the Staff Regulations, 2013').

2. The State Government vide Notification No. MPP-MPP-A(3)-2/2003 dated 16th May, 2020, re-constituted the Himachal Pradesh Electricity Regulatory Commission as "Three Member Commission" in place of "two Member Commission"; and consequent upon re-constitution of the Commission, the State Government created the post of Member (Law) and six other posts of various categories such as Assistant Registrar (Judicial), Private Secretary, PA-cum-Judgment Writer, Assistant Programmer, Driver and Peon.

3. As per Regulation 7 of the Staff Regulations, 2013, the conditions of service, including recruitment and appointment of the officers and other

employees of the Commission, grant of House Building Advance, medical reimbursement after retirement, leave encashment, ex-gratia etc., for which no express provision or insufficient provision has been made in these Regulations, the rules and orders as are applicable to the similarly situated State Government employees, shall apply. Sub-regulations (2) of Regulation 7 of the Staff Regulations, 2013 provides that unless otherwise allowed with the approval of the State Government, the Himachal Pradesh Civil Services Contributory Pension Rules, 2006 shall apply to the regular employees of the Commission.

4. The GoHP vide Office Memorandum No. Fin (Pen)A(3)-1/2023 dated 17.04.2023 decided that the contributions of the State Government employees (i.e. employee's and employer's share) covered under the New Pension Scheme (NPS) shall be stopped w.e.f. 1st April, 2023.

5. The Government of HP vide Office Memorandum No. Fin(Pen) A(3)-1/2023 dated 04.05.2023 has decided to implement the Old Pension Scheme (OPS) also known as Central Civil Services (Pension) Rules, 1972 for the regular/ retired employees who are/ were covered under the NPS and issued instructions/SOP in this regard. Para (vii) of the above Memorandum dated 04.05.2023 relating to the date of applicability of the O.P.S. is reproduced as under:-

“(vii) Employees, who were covered under the National Pension System (NPS) and have already retired/died, between the period 15.05.2003 to 31.03.2023 and who fulfill the eligibility criteria under the Central Civil

Services (Pension) Rules, 1972, such retired employee and eligible family member of deceased employee, shall be entitled to pension from prospective date i.e. with effect from 01.04.2023, on exercising an option for the same on the prescribed format at Annexure-II and submission of an undertaking at Annexure-III, subject to deposit of the Government contribution and dividend/return, till the date of withdrawal, to the State Government. The amount of Government contribution and dividend/return shall be deposited under the Receipt Head "0071-Contribution & Recoveries towards pension and other retirement benefit, 01-Civil, 101-Subscriptions and Contributions, 03-Accumulated Pension Wealth in respect of National Pension System Subscribers and 04-Accumulated dividend on Government Contribution of National Pension System employees converted into Old Pension Scheme."

6. The Govt. of HP vide Fin(Pen)A-(3)-1/2023 dated 04.05.2023 has also amended the CCS (Pension) Rules, 1972 and made the same effective w.e.f. 01.04.2023 for its employees.

7. The Commission has adopted the instructions/ SOP contained in Office Memorandum No. Fin(Pen) A(3)-1/2023 dated 04.05.2023 issued by the GoHP vide Order No. HPERC-B010/1/2023-I/201715/2023 dated 31.05.2023 and obtained the options and undertakings from the employees for opting OPS as per the format specified by the State Government in Office Memorandum dated 04.05.2023, referred to above. Pursuant thereto, the retirees of the Commission after exercising option/ undertaking for opting OPS have deposited the employer's share with dividend/ return with the Commission.

8. The Commission, thus, in order to lay down the terms and conditions i.e. qualification and other eligibility conditions to the aforesaid newly created posts and to substitute/ amend sub-regulation (2) of

Regulation 7 of the Staff Regulations, 2013, in view of the Office Memorandum No. Fin(Pen)A(3)-1/2023 dated 17.04.2023 and Office Memorandum No. Fin(Pen) A(3)-1/2023 dated 04.05.2023, decided to amend sub-regulation (2) of Regulation 7 and issued the draft of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions of Service of Staff) (Fourth Amendment) Regulations, 2023 on 21st August, 2023 which was published in the Rajpatra, Himachal Pradesh on 23rd August, 2023.

9. As required under Sub-section (3) of the Section 181 of the Electricity Act, 2003 (36 of 2003) (hereinafter to be referred as 'the Act' for short) and Rule 3 of the Electricity (Procedure of Previous Publication) Rules, 2005, the Commission also invited public objections/suggestions by way of insertion of public notice in two daily newspapers i.e. "The Tribune" and "Dainik Bhaskar" on 25th August, 2023. The full text of the draft amendment Regulations was made available on the Commission's website: www.hperc.org. The last date for filing objections/suggestions was 23.09.2023.

10. The Commission, vide letter dated 31.08.2023, as required under Section 91(3) of the Act also sent a copy of said draft amendment Regulations to the State Government for information and necessary action.

11. A public hearing in the matter was scheduled to be held on the 18th November, 2024 at 03:00 PM onwards in the office of the Commission for which public notice was inserted in two daily newspapers i.e. "Indian Express" and "Divya Himachal" on 07.11.2024.

12. As scheduled, the public hearing on the matter was held on 18th November, 2024. The list of participants who attended the public hearing on 18.11.2024 is annexed at **Annexure-"A"**. The Commission also received comments/suggestions on the draft proposal from the following stakeholders including State Government:-

- i. Smt. Rinku Gautam, Director (TE), HPERC
- ii. Sh. Ajay Chadha, Director (TA), HPERC
- iii. Sh. Kamal Singh Dilaik, DD(CA & Admin.), HPERC
- iv. Sh. Bhoop Singh Kanwar, Sr. PS, HPERC
- v. Sh. Dinesh Chauhan, Reader, HPERC
- vi. Sh. Rajeev Kumar, PA, HPERC
- vii. Sh. J.S. Raitka, Jt. Director (Retd.), HPERC
- viii. Sh. Sushil Kumar Kashyap, PAO(Retd.), HPERC
- ix. Smt. Rama Mahajan, PAO (Retd.), HPERC
- x. Sh. Satish Gharu, Private Secretary (Retd.), HPERC
- xi. Sh. K.S. Dhaulta, Consumer Representative, HPERC

Objections and issues raised during the public hearing and by way of written suggestions/ objections.-

13. During the public hearing, the stakeholders i.e. retirees, employees of the HPERC including other participants i.e. Sh. Kameshwar Dhaulta, Consumer Representative and Sh. Kamlesh Saklani Authorised Representative of the HPSEBL presented their views. The issues and

concerns voiced by the stakeholders in the public hearing and by way of written submissions are briefly discussed as under:-

14. Smt. Rinku Gautam, Director (Tariff Economics)

- (i) Smt. Rinku Gautam, Director (Tariff Economics) has submitted that the Commission may clarify whether or not the Old Pension Scheme would be backed by the Government of Himachal Pradesh. In case there is no written guarantee or backing of the Government of Himachal Pradesh, the Commission may consider to add other suitable provisions to safeguard the deposits and pension of the employees and their families, in future. Further, in the eventuality of non-existence or closure or merger of the HPERC, a procedure as to how would the system of pension run, and who would operate, as well as other procedural modalities be also included in the Regulations. She has also stated that in the fresh scenario, the Commission may seek options from the employees of the Commission, informing them of the financial position.
- (ii) She has further stated that the provision of promotion etc. for the newly created posts be also considered.

15. Sh. Ajay Chadha, Director (Technical Analysis)

(i) Sh. Ajay Chadha, Director (Technical Analysis) has submitted that the Commission is a pensionable organization which was governed under treasury system before the notification of HPERC Fund Rules, 2007 and currently, the Commission has liaison with the State Treasury through DDO code. He also submitted that the employees of the HP State Information Commission, which was constituted in the year 2006 (after six year functioning of HPERC), have been allowed the Old Pension Scheme, therefore, similar benefits may also be allowed to the staff of the HPERC/ Commission. He has further submitted that no specific approval or decision of the State Government, as proposed in sub-regulation (2) of Regulation 7 of the Staff Regulations, 2013 is required to adopt Old Pension Scheme, in view the provisions of sub-regulation (3) of Regulation 8 of the Staff Regulations, 2013. Therefore, the Commission may consider either to modify the proposed amendment of sub-regulation (2) of Regulation 7, or omitting the existing provision of sub-regulation (2) of Regulation 7 as under:-

“(2) The employees of the Commission if opt for CCS Pension Rule, 1972 (OPS) as per the Office Memorandum No. Fin (Pen) A(3)-1/2023 dated 4th May, 2023 of Finance (Pension) Department, Government of Himachal Pradesh, shall be eligible for the benefits of

the Old Pension Scheme (1972) as amended by the State Government time to time:

Provided that in cases where the employees of the Commission opt to remain under National Pension Scheme (NPS), they shall be governed under the said scheme or any other pension scheme adopted by the State Government/ Commission in place of NPS.”

- (ii) Sh. Ajay Chadha has further submitted that the proposed qualification for the post of Programmer may be re-visited and qualification of Bachelor in Engineering be provided. He has also submitted that Promotion avenues available to Engineering Cadre in the State Power Sector be also provided for the post of the Executive Director (Technical Analysis) of the Commission after a period of 3 years by amending Schedule-II of the Staff Regulations, 2013 in line with the DOPT and Model Staff Regulations framed by Forum of Regulators. Further, the Regulation 14 of the Staff Regulations, 2013 be considered for amendment.

16. Sh. Kamal Singh Dilaik, Deputy Director (Consumer Affairs & Administration)

- (i) Sh. Kamal Singh Dilaik, Deputy Director (Consumer Affairs & Administration) has submitted that the proposed amendment may be carried out in the Staff Regulations 2013. He has proposed the following modification:-

“Besides specific approval as conveyed by State Government from time

to time in the individual cases, rest of all the regular employees of the Himachal Pradesh Electricity Regulatory Commission shall also cover under Old Pension Scheme known as the Central Civil Services (Pension) Rules, 1972 subject to exercise the option by individual concerned; otherwise the Himachal Pradesh Civil Services Contributory Pension Rules, 2006 shall apply to them”.

17. Sh. Bhoop Singh Kanwar, Sr. Private Secretary

- (i) Sh. Bhoop Singh Kanwar, Sr. Private Secretary has submitted that he has already given the option for OPS and has supported the proposed amendment. He has also proposed the following modification:-

“Unless otherwise the decision or specific approval has been conveyed by the State Government or unless otherwise opted by the employee to continue under the National Pension System (also known as the Contributory Pension Scheme); the Old Pension Scheme also known as the Central Civil Service (Pension) Rules, 1972, for the existing/retired regular employees who were covered under the National Pension Systems shall apply to them.”

18. Sh. Dinesh Kumar Chauhan, Reader

- (i) Sh. Dinesh Kumar Chauhan, Reader has submitted that the qualification proposed for the post of Assistant Registrar (Judicial) i.e. possessing a professional Degree in Law, may be excluded, being promotional post among the feeder category and the common R&P Rules notified by State Government may be adopted for all non-technical posts as already provided in the Staff Regulations, 2013. He has further submitted that the proposed amendment may be modified as under:-
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“Unless otherwise allowed with the approval of the State Government and opted by the employee, the Himachal Pradesh Civil Service Contributory Pension Rules, 2006 and the Old Pension Scheme under Central Civil Service (Pension) Rules, 1972 shall be applicable to the retired /regular employees of the Commission, as applicable to the employees of State Government.”

- (ii) Sh. Dinesh Chauhan, has further submitted that the post of JOA (IT) has not been incorporated in the proposed amendment of the Schedule and may also be incorporated in line with common R&P Rules.

19. Sh. Rajeev Kumar, PA

- (i) Sh. Rajeev Kumar, PA has submitted that the ‘three years’ service period criteria for promotion from PA to PS may be considered as against the service period as provided in the draft proposal.

20. Sh. Jagdev Singh Raitka, Joint Director (Retd.),

- (i) Sh. Jagdev Singh Raitka, Joint Director (Retd.), HPERC has stated that consequent upon the adoption of the Office Memorandum No. Fin(Pen)A/(3)-1/2023 dated 4th May, 2023 by the Commission, he has opted for the OPS and that his past services have been counted for by the Commission as qualifying service for the purpose of retirement benefit and retirement gratuity has already been paid to him. He has also stated that the proposed amendment be carried out in the Staff
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Regulations in the interest of existing/retired employees of the Commission being a social security measure. During public hearing, he has stated that if the Commission does not sustain in the years to come, the liability will definitely be taken over by the State Government as the liability goes with the assets.

21. Smt. Rama Mahajan, Personal cum Administration Officer (Retd.),

- (i) Smt. Rama Mahajan, PAO (Retd.), HPERC has made similar comments as that of Sh. Jagdev Singh Raitka, Joint Director (Retd.). She has also submitted that the Hon'ble High Court has passed judgment dated 10.01.2023 in CWPOA No. 3472 of 2020 titled Rama Mahajan v. HPERC & others in her favour.

22. Sh.. Satish Gharu, Personal Secretary (Retd.), and Sh. Sushil Kumar Kashyap, Personal cum Administration Officer (Retd.)

- (i) Sh. Satish Gharu, PS (Retd.), HPERC and Sh. Sushil Kumar Kashyap, PAO (Retd.) HPERC have also stated that on adoption of Govt. of H.P. memorandum regarding implementation of Old Pension Scheme for the employees/retirees by the Commission, they have already submitted the option in compliance of office order No. HPERC-0010/1/2023 dated 31.05.2023 and that their past services have been recognized as qualifying service for the purpose of
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retirement benefits and they have been paid gratuity. According to them, the proposal is in the interest of the employees and may be finalized.

23. Sh. K.S. Dhaulta, (HPAS Retd.), Consumer Representative

- (i) Sh. K.S. Dhaulta, (HPAS Retd.), Consumer Representative has submitted that the proposed amendment of the Staff Regulations, 2013 appears to be in tune with the State Government decision on the matter issued vide FD memorandum notified on 17.01.2023 and subsequent Standard Operating Procedures (SOPs) issued on 04.05.2023, to implement the Old Pension Scheme (OPS) for existing and retired employees who were covered under the National Pension Scheme (NPS) system. The amendment proposes to apply the OPS to existing and retired employees of the Commission on the analogy of State Government decision in the matter which is in the larger interest of the existing and retired employees of the Commission. However, the Commission may ensure that no additional burden on this account is passed on to the consumers of the State.
 - (ii) Further, the amendment proposed in Part-I and Part-II of the Staff Regulations, 2013 for newly created posts appears to be
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justified but the Commission may ensure the justification of said posts.

24. Sh. Kamlesh Saklani, Authorized Representative, HPSEBL

- (i) Sh. Kamlesh Saklani, Authorized Representative, HPSEBL has endorsed the views of the Consumer Representative in the matter. He has also stated that the burden may not be passed on to the consumers and the HPSEBL on account of the finalization of the draft amendment Regulations.

25. Comments of the State Government:-

- (i) The State Government vide their letter No. MPP-F010/43/2023 dated 19.10.2024 has submitted the following comments on the draft amendment Regulations:-

“The CCS (Pension) Rules, 1972 were in force and applicable to the Government employees appointed on or before 14.05.2003. The State Government vide notification/OM dated 04.05.2023 has restored the CCS (Pension) Rules, 1972 (OPS) for the Government employees who were appointed on or after 15.05.2003 and were covered under the National Pension System (NPS). On the other hand, the CCS (Pension) Rules, 1972 were never in force in the HPERC prior to the 14.05.2003, as such, question of restoration/adoption of these Rules, in said organization does not arise.”

Consideration of written submissions and view points expressed in the public hearing by the stakeholder(s) i.e. retirees, employees of the HPERC, Consumer Representative and representative of the HPSEBL and Commission’s Analysis and Views-

A. Analysis on amendment of sub-regulation (2) of Regulation 7

26. The Commission has gone through the submissions of the stakeholders and the record carefully. The analysis and views of the Commission on the amendment of sub-regulation (2) of Regulation 7 are as under:-

27. Objections and suggestions of Smt. Rinku Gautam:

- (i) The sum and substance of the suggestions of Smt. Rinku Gautam is that the Govt. of H.P. has not agreed to the proposal of Pension in respect of employees of the Commission and, therefore, the implementation of OPS for the employees of the HPERC without the support of the Govt. of H.P. shall not be sustainable and adequate provisions be made and that fresh options be called for from the employees of the Commission.
- (ii) The Commission has carefully gone through the suggestions of Smt. Rinku Gautam and is of the opinion that the Govt. of H.P. vide OM No. Fin(Pen)A(3)-1/2023 dated 04.05.2023 has allowed OPS to its employees w.e.f. 01.04.2023 subject to certain terms and conditions. Further, the Govt. of HP vide letter No. MPP-F010/31/2023 dated 23.03.2024 has advised the Commission to meet the functional liability on account of implementation of pension out of its own resources under appropriate rules/regulations, as may be applicable. Thus, the Commission is

required to take appropriate decision for grant of benefits of OPS to its regular/ retired employees who are/ were covered under EPF/ CPF/ NPS w.e.f. 01.04.2023 as per the HPERC Fund Rules made by the Govt. of H.P. and notified vide notification No. MPP-A(3)-7/2004 dated 03.05.2007 and subsequently amended vide notification No. MPP-B (10)-3/2007 dated 06.04.2017.

28. Objections and suggestions of Sh. Ajay Chadha, Sh. Kamal Singh Dilaik and others serving and retired employees of the Commission:

- (i) The other employees i.e. Sh. Ajay Chadha, Director (TA), Sh. Kamal Singh Dilaik, DD(CA & Admin.), Sh. Bhoop Singh Kanwar, Sr. PS, Sh. Dinesh Chauhan, Reader, Sh. J.S. Raitka, Joint Director (Retd.), Sh. Sushil Kumar Kashyap, PAO (Retd.), Smt. Rama Mahajan, PAO (Retd.) and Sh. Satish Gharu, Private Secretary (Retd.), have not opposed the amendment and have submitted that the proposed amendment being in the interest of the employees and a social security measure, the same be carried out. Though, Sh. Ajay Chadha, Sh. Kamal Singh Dilaik, Sh. Bhoop Singh Kanwar and Sh. Dinesh Chauhan have proposed minor modifications in the same but the sum and substance of the suggestions of the above employees is that the proposed amendment is in the interest of the employees and may be carried out.
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29. Objections and suggestions of Sh. K.S. Dhaulta and Sh. Kamlesh Saklani:

- (i) The retiral and other expenses are being incurred out of the HPERC Fund constituted under HPERC Fund Rules. As such, the suggestion of Sh. K.S. Dhaulta and Sh. Kamlesh Saklani also loose significance. Not only this, the Commission is of the view that the HPERC had been incurring the expenses for contributing to the pension share of employees under NPS or OPS out of the HPERC Fund.

Steps taken by the Commission after implementation of OPS by the State of H.P. to its employees.

30. The Commission has initiated the steps relating to implementation of Old Pension Scheme (OPS) for the eligible regular/ retired employees of the Commission consequent upon the issuance of Office Memorandum No. Fin(Pen)A(3)-1/2023 dated 17.04.2023 by the Govt. of H.P. whereby it was decided that the contributions of the State Government employees (i.e. employee's and employer's share) covered under the New Pension Scheme (NPS) shall be stopped w.e.f. 1st April, 2023 and the Office Memorandum No. Fin(Pen) A(3)-1/2023 dated 04.05.2023 whereby the Govt. of H.P. decided to implement the Old Pension Scheme (OPS) also known as Central Civil Services (Pension) Rules, 1972 for the regular/ retired employees who are/ were covered under the NPS. Further, the

Govt. of H.P. has also amended the CCS (Pension) Rules, 1972 vide notification dated 04.05.2023. By virtue of said amendment, the amended rules are applicable to the employees of the Commission as per sub-regulation (2) of Regulation 8 of the Staff Regulations, 2013. Thus, the In view of the instructions/ SOP issued by the State Govt., the Commission has adopted the instructions/ SOP issued by the GoHP vide Order No. HPERC-B010/1/2023-I/201715/2023 dated 31.05.2023 and obtained the options and undertakings from the employees for opting OPS as per the format specified by the State Government in Office Memorandum dated 04.05.2023, referred to above. Pursuant thereto, the retirees of the Commission after exercising options/ undertaking for opting OPS have deposited the employer's share with dividend/ return with the Commission.

31. Not only this, in compliance to letter No. HPERC-B010/1/2023-1831-35 dated 12.09.2024, the retired employees have withdrawn their cases pending in the Hon'ble High Court of H.P.

32. The Commission has proposed the amendment in sub-regulation (2) of Regulation 7 of the Staff Regulations, 2013 relating to applicability of Old Pension Scheme. The said draft amendment was referred to the State Government for information and necessary action. The State Government vide letter No. MPP-F010/43/2023 dated 19.10.2024 has conveyed that the CCS (Pension) Rules, 1972 were never in force in the

Commission prior to the 14.05.2003, as such, question of restoration/ adoption of these Rules, in the HPERC does not arise. However, the response of the Govt. of H.P. is silent that the State Govt. has any objection for amending the Staff Regulations, 2013 as proposed.

33. It is evident from the record that initially the salary of the staff of the Commission on its constitution was being released through the State Treasury having the status of State Government Department and was operated under DDO/ Treasury Code.

34. The Commission had taken up the matter with the Govt. of HP for covering the employees of the Commission under the Old Pension Scheme but while responding to the request of the Commission, the Govt. of H.P. made the observations in the letter dated 23.03.2024 that employee of the HPERC are not the employees of the State Government. The said observations of the GoHP is contrary to the clarification of the State Government on the status of the Commission and its employees given earlier to the Accountant General, HP vide letter No. Fin(Pen) A(3)-5/2006 dated 30.09.2008 with copy to the Commission. Not only this, the Govt. of H.P. also made observations in the said letter dated 23.03.2024 that since the employees of the Commission are not the Government employees, their Pension cases need not to be sent to A.G. (A&E). The said observations, besides being in direct conflict with the letter dated 30.09.2008 and various other approvals conveyed by the State

Government to the Commission, from time to time, are also contrary to the provisions of Sections 82(2), 91, 102, 103, 104, 105 and 106 of the Act and Rules 2, 3, 6 and 7 of the HPERC Fund Rules. It is relevant to mention here that the Commission is established and constituted under the Central Act to discharge quasi-judicial functions under the Electricity Act, 2003 and Rules and Regulations framed thereunder and the Commission, therefore, in no way can be termed or equated as an undertaking of the State/ autonomous body. No doubt, for the purpose of Tariff determination and for performing the statutory functions under the Act, the Commission has to maintain a distance and act independently of the State Government, yet for all intent and purposes, the status of the Commission is a statutory body of the State Government, constituted under the Electricity Regulatory Commissions Act, 1998.

35. In this regard, it is also relevant to refer that consequent upon the implementation of the Himachal Pradesh Civil Service Contributory Pension Rules, 2006 (Pension Rules, 2006 for short) w.e.f. 15.05.2003 for the employees of the Government of H.P., the Commission also took up the matter with the GoHP vide letter No. HPERC/ Secy-BMN/ CPS:687/ CV/SK/ 2008-09-2248-49 dated 11.9.2008, regarding Contributory Pension Scheme. On this, the AG, H.P. vide letter No. Funds-15/CPS/Misc./2008-09/2666-67 dated 27.08.2008 sought clarification from State Government regarding the Status of the

employees of the Commission. The GoHP vide their letter No. Fin(Pen)A(3)-5/2006 dated 30th September, 2008 clarified the A.G., H.P with copy to this office as under:-

"I am directed to refer to your letter No. Funds-15/CPS/Misc./2008-09/2266-67 dated 27th August, 2008 on the subject cited above. In this connection it is intimated that with the implementation of Himachal Pradesh Civil Services Contributory Pension Rules, 2006 w.e.f. 15.05.2003 the employees appointed on or after 15.05.2003 in the H.P. Electricity Regulatory Commission have been allotted Permanent Pension Accounts Number by your office and they have been contributing to Contributory Pension Fund since inception of the Scheme. Though the employees of H.P. Electricity Regulatory Commission is drawing their salary from the Fund established with the Grant-in-Aid sanctioned by State Government yet they are employees of H.P. State Government. As such denial for maintenance of Contributory Pension Scheme in respect of H.P. Electricity Regulatory Commission at a juncture when the accounts of the Contributory Pension Fund scheme are proposed to be transferred to Central Record Keeping Agency for record keeping and maintenance of accounts etc. is not appropriate.

It is, therefore, requested that accounts of the Contributory Pension Fund Scheme in respect of employees of H.P. Electricity Regulatory Commission may be maintained as heretofore."

36. After receipt of the above clarification from the State Government dated 30.09.2008 by the A.G., H.P. with a copy to this office, the NPS cases of the employees of the Commission were considered by the AG, HP for opening of their NPS Accounts on the analogy of H.P. Government Employees.

37. The GPF accounts of the regular employees of the Commission have been allotted by the AG H.P. and the subscription from the salary towards their GPF Accounts is being made continuously.

38. It is also relevant here to refer to the Status of the employees of the Commission is as under:-

(i) The services of a few officers and officials were taken by the Commission on secondment basis in the year 2001 at the time of its formation. Subsequently, the services of some of the Officials/Officers were permanently absorbed in the Commission during the year 2004 with certain terms and Conditions in consonance with the prevalent rules of the concerned Department/ Organization.

(ii) The matter regarding applicability of Pension Scheme in respect of Sh. Kamal Singh Dilaik and Sh. Satish Arya on their permanent absorption was taken with the State Government vide letter No. HPERC/Secy./753/MS/DS/RM/2014-2201 dated 29.09.2014 and letter No. HPERC-B(5)-11/2013-4021 dated 21.03.2016, respectively. The Department of MPP & Power, GoHP conveyed its approval vide letters No. MPP-B (10)-3/2010 dated 15.05.2015 and No.MPP-B(1)-1/2009 dated 22.03.2017, respectively in favour of both the employees to continue in the Old Pension Scheme i.e. CCS (Pension) Rules, 1972.

(iii) With the implementation of the Pension Rules, 2006 w.e.f. 15.05.2003, the Commission has been allotted Permanent

Pension Account Number and has been contributing continuously to the Pension Fund.

(iv) The State Government vide letter No. MPP-A3)-1/2003 dated 28th June, 2006 has allowed the pay scale structure to all sanctioned posts in the Commission at par as applicable in the State Government for its employees instead of higher pay structures of HPSEBL for equivalent posts which is higher than State Govt. pay scales. At this moment, all other allowances applicable for the State Govt. employees are made applicable in the HPERC.

39. As mentioned above, in response to the letters dated 21.09.2023 and 30.12.2023 of the Commission regarding payment of Pension to the regular employees of the Commission, the Department of MPP & Power, GoHP vide letter No. MPP-F010/31/2023 dated 23.03.2024 has conveyed that all the expenses related to salary, allowances, medical reimbursement, retiral benefits, terminal benefits, expenditure related to salary allowances, honorarium etc. of the Chairperson, Member, Secretary, Officer and other employee of the Commission are to be met from the said Fund and that the employees of the Commission are required to be paid retiral benefits from the HPERC Fund as the Commission is a statutory autonomous body having perpetual succession and a common seal, with power to acquire, hold and dispose of the

property, both movable and immovable, and to contract and shall, by the said name, sue or be sued. In the concluding para of the said letter dated 23.03.2024, it has been conveyed that:-

“to take its own recourse of payment of pensionary benefits from the HPERC Fund, to the employees who were covered under CCS (Pension) Rules, 1972 prior to their permanent absorption in the HPERC. The HPERC may also take appropriate decision for grant of retirement benefits to the other employees/ retirees under appropriate rules/ regulations, as may be framed/ determined by the Commission, in terms of para 8 (3) of the HPERC Regulations, 2013 in respect of employees/ retirees who were earlier covered under EPF/CPF/NPS before their permanent absorption in the Commission, from the HPERC Fund, as per notification dated 06.04.2017. It has also been intimated that the sustainability of the fund in future, at its own level. The State Government has not liability to pay the retirement benefits to the employees of HPERC as they are not the employees of the State Government.”

40. In view of the above special circumstances as mentioned hereinbefore, especially letter No. MPP-F010/31/2023 dated 23.03.2024 of the MPP & Power Department, whereby the GoHP has advised the Commission to take its own recourse for payment of pensionary benefits from the HPERC Fund constituted under the HPERC Fund Rules to the employees who were/ are covered under the CCS (Pension) Rules, 1972, the Commission is required to take appropriate decision for grant of retirement benefits to the regular employees/ retired employees of the Commission under appropriate rules/ regulations, as may be applicable, and in terms of sub-regulation (3) of Regulation 8 of the Staff

Regulations, 2013 by carrying out the proposed amendment in sub-regulation (2) of Regulation 7 of the Staff Regulations, 2013.

41. Significantly, the Rajasthan Electricity Regulatory Commission has also provided such enabling provision in its Staff Regulations for covering its employees under CCS (Pension) Rules, 1972.

42. The Commission vide Order dated 03.09.2024 on the basis of the advice of the Govt. of HP MPP-F0103/31/2023 dated 23.03.2024 has ordered that the employees/retired employees of the Commission who have exercised the option for Old Pension Scheme (OPS) shall be entitled for the Old Pension Scheme. The Commission while allowing the implementation of OPS for its employees had in view the provisions of sub-regulation (3) of Regulation 8 of the Staff Regulations, 2013.

43. However, while considering the cases of the retired employees under the existing Staff Regulations, 2013, the Commission observed that the instant proposal for amending the sub-regulation 2 of Regulation 7 of Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions of Service of Staff) Regulations, 2013 has already been submitted in the public domain which was yet to be finalized.

44. Apparently, the Govt. of HP vide O.M. No. Fin(Pen)A-(3)-1/2023 dated 17.04.2023 has decided that the contribution of the State Govt. employees (i.e. employee's and employer's share) covered under NPS shall be stopped w.e.f 01.04.2023 and vide O.M. No. Fin(Pen)A-(3)-

1/2023 dated 04.05.2023 has allowed the benefits of Old Pension Scheme to the employees of the State Govt. w.e.f. 01.04.2023. The Government of H.P. has amended the Himachal Pradesh Civil Service Contributory Pension Rules vide Second Amendment Rules, 2023 vide notification No. Fin(Pen)A(3)-1/2023 dated 04.05.2023. Since in view of the above O.M.'s/ Notifications, the Commission has called for the options from the employees of the Commission vide Office Order No. HPERC-B010/1/2023-I/201715/2023 dated 31.05.2023 and has also adopted the Old Pension Scheme to its regular/ retired employees, and since the Govt. of HP vide its letter No. MPP-F 010-43/2023 dated 19.10.2024 has asked the Commission to make its own provisions for paying the retiral benefits to the employees from the HPERC Fund, the Commission deems it expedient in the interest of Justice to amend the sub-regulation (2) of Regulation 7 of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions of Service of Staff) Regulations, 2013 providing the applicability of the CCS (Pension) Rules, 1972 to the employees of the Commission. Thus, sub-regulation (2) of Regulation 7 is ordered to be amended as under:-

“(2) The regular employees of the Commission covered under the Himachal Pradesh Civil Services Contributory Pension Rules, 2006 (known as New Pension Scheme), and opted to the Central Civil Services (Pension) Rules, 1972 (known as Old Pension Scheme), in pursuant to the State Government Office Memorandum No. Fin.(Pen.)A(3)-1/2023 dated 4th May, 2023, shall be entitled to the pension w.e.f. 01.04.2023

under the Central Civil Services (Pension) Rules, 1972, subject to the fulfilment of eligibility and other conditions specified under the said Pension Rules and State Government Office Memorandum dated 4th May, 2023:

Provided that the employees of the Commission retired/died between the period 15.05.2003 to 31.03.2023 and have already availed pensionary benefits under the Himachal Pradesh Civil Services Contributory Pension Rules, 2006 (known as New Pension Scheme), and opted to the Central Civil Services (Pension) Rules, 1972 (known as Old Pension Scheme) in pursuant to the State Government Office Memorandum No. Fin(Pen.) 4(3)-1/2023 dated 4th May, 2023 and have deposited the employer's share and dividend/return with the Commission shall be entitled to the pension w.e.f. 01.04.2023 subject to fulfilment of eligibility criteria under the C.C.S. (Pension) Rules, 1972 and the State Government Office Memorandum dated 04th May, 2023."

45. Significantly, the Commission while going through the sub-clause (iv) of Clause 2 of Part-III of Schedule-II appended to the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions of Service of Staff) Regulations, 2013 has observed that the almost a similar provision is existing which is reproduced as under:-

"2. (iv) From the date of appointment on absorption after 15-5-2003, all employees shall automatically be covered under the Himachal Pradesh Civil Services Contributory Pension Rules 2006 unless other terms and conditions have been given in their absorption orders"

46. Consequent upon the amendment of the sub-regulation (2) of Regulation 7 as mentioned above, the sub-clause (iv) of Clause 2 of Part III of Schedule-II appended to the Staff Regulations, 2013 has become redundant is ordered to be deleted accordingly.

47. Since, the sub-regulation (2) of Regulation 7 of the Staff Regulations, 2013 has been amended on and w.e.f. 14.01.2024, a fresh option is ordered to be given to all the employees to give their option to

continue in the New Pension Scheme regime or for payment of pension under the Old Pension Scheme.

Commission's view on the amendment in Part-I and Part-II of the Schedule-II:-

48. The Commission has carefully considered the suggestions of the stakeholders received on the amendment of Part-I and Part-II of the Schedule-II and views of the Commission as under:-

49. **Sh. Kamal Singh Dilaik, Deputy Director (CA& A) and Sh. Dinesh Chauhan (Reader)**

- (i) The suggestions of Sh. Kamal Singh Dilaik, Deputy Director (CA & A) and Sh. Dinesh Chauhan (Reader) that the qualification for the post of Assistant Registrar (Judicial) may be considered at par with the qualification of the post in the State Government Departments do not merit consideration as post of Assistant Registrar (Judicial) has been created in the nomenclature of Assistant Registrar (Judicial) and is not a post similar to that of the Assistant Registrar in any other Govt. Department. It is relevant to mention that in the High Courts, Supreme Court and other Judicial bodies, the essential qualifications for the post of Assistant Registrar (Judicial) is professional degree in Law. Significantly, the Hon'ble Supreme Court in Civil Appeal
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No.14697 of 2015 titled State of Gujrat V/s Utility Users Welfare Association & Others decided on April 12, 2018 reported in 2018 (6) SCC 21, has held while interpreting Section 86 of the Act, 2003, that the Commission has the 'Trappings of the Court and perform Judicial functions'. Thus, the post of the Assistant Registrar (Judicial) cannot be equated with the Assistant Registrars working in the Administrative Departments of the State Government Departments. Hence, the Commission decides to retain the qualification of professional degree in Law for the post of Assistant Registrar (Judicial).

50. **Smt. Rinku Gautam, Director (TE)**

- (i) Coming to the suggestion of Smt. Rinku Gautam, Director (TE) that the promotional avenues may be considered for other newly created posts on the lines of other posts is also beyond the scope of the proposal. The posts of Assistant Registrar (Judicial), Private Secretary and PA-cum-Judgment Writer may be filled up from the eligible incumbents in the line of promotion, provided they fulfill of requisite qualification and experience. In so far as the post of Assistant Programmer is concerned, the same is to be filled through direct recruitment/ secondment basis or on outsource basis and being a single post, the promotional avenue cannot be provided at this stage.
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51. **Sh. Rajeev Kumar, PA**

- (i) The suggestion of Sh. Rajeev Kumar, PA for three years service criteria for promotion also do not merit consideration as the requisite qualification has been provided as per the standard provisions specified by the State Govt. for such post. As and when, such service criteria is met, the incumbent may be considered for the same.

52. **Sh. K.S. Dhaulta, Consumer Representative and Sh. Kamlesh Saklani, Authorised Representative**

- (i) In so far as the suggestions of Sh. K.S. Dhaulta, Consumer Representative and Sh. Kamlesh Saklani, Authorised Representative that the Commission may ensure the justification of the newly created posts vis-à-vis need and resources at Commission level to avoid any legal and financial complexities at a later stage and ensure that no additional burden on this account is passed on the consumers of the State are considered, the Commission on careful consideration is of the view that the posts are essential to be filled up for the effective working of the Commission. It is relevant to add here that the Commission even after 24 years of its constitution is functioning with deployment of minimum staff as compared to the sanctioned posts. Most of the posts are filled on secondment basis to avoid permanent liabilities.

The Commission is of the considered view that for continuity and intuitional memory, critical posts are required to be filled-up on regular basis in the Commission cadre. Therefore, the suggestions of Sh. Dhaulta and Sh. Saklani are of no consequence.

53. Sh. Ajay Chadha, Director (TA) and Sh. Dinesh Chauhan (Reader)

- (i) Though Sh. Ajay Chadha, Director (TA) has stated that the qualification for the post of Assistant Programmer is required to be re-visited but the Commission is of the view that the qualification as provided for said post is adequate in view of the duties and responsibilities attached to the post. As such, the Commission decides to retain the proposed qualifications. The other suggestions made by Sh. Ajay Chadha (TA) regarding promotional avenues of the post of ED (TA) has no bearing with the proposed amendment and, therefore, cannot be considered at this stage. Similarly, the suggestions of Sh. Dinesh Chauhan for inclusion of qualification for the post of JOA(IT) in the amendment is also of no consequence being beyond the scope of the present proposal.

In view of the above, the Commission proceeds to finalize the amendment to the Schedule-II without any change.

In view of the above, the Commission, after taking into consideration the objections and suggestions received on the draft proposal and the deliberation in the public hearing conducted thereon,

decides to finalize the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions of Service of Staff) (Fourth Amendment) Regulations, 2024 by incorporating the changes on the above lines. The Regulations be issued accordingly.

Announced
22.01.2025

-Sd-
(Yashwant Singh Chogal)
Member (Law)

-Sd-
(Devendra Kumar Sharma)
(Chairman)

Annexure-“A”

Sr. No.	Participants
1	Sh. Sushil Kumar Kashyap, PAO(Retd.)
2	Sh. Satish Gharu, Private Secretary (Retd.)
3	Smt. Rama Mahajan, PAO (Retd.)
4	Sh. J.S. Raitka, Jt. Director (Retd.)
5	Sh. K.S. Dhaulta, Consumer Representative, HPERC
6	Sh. Raj Kumar Sharma, PAO (Retd.)
7	Smt. Rinku Gautam, Director (TE), HPERC
8	Sh. Rajeev Kumar, PA, HPERC
9	Sh. KamleshSaklani, AR, HPSEBL