



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.2781 of 2017

Orders reserved on : 01.03.2021

Orders pronounced on : 19.04.2021

(Through Video Conferencing)

**Hon'ble Mr. A.K. Bishnoi, Member (A)
Hon'ble Mr. R.N. Singh, Member (J)**

1. Pravin Dattatraya Patil (Applicant No.1),
S/o Shri Dattatraya,
Assistant/DRT – II,
Jeevan Tara Building, Sansad Marg,
New Delhi – 110001.
2. Shri Chandrakant Marotrao Watkar (Applicant No.2)
S/o Shri Marotrao,
Assistant/DRT – II,
Jeevan Tara Building, Sansad Marg,
New Delhi – 110001.

[SINCE DECEASED] THROUGH HIS LR's
Smt. Jyoti Chandrakant Watkar, Age about 56 years
W/o Late Sh. Chandrakant Marotrao Watkar
Mr. Pratik Chandrakant Watkar, Age about 29 years
S/o Late Sh. Chandrakant Marotrao Watkar
Ms. Ankita, Chandrakant Watkar, Age about 24 years
D/o Late Sh. Chandrakant Marotrao Watkar
Add -

3. Shri Kamlakar Narayan Hedau (Applicant No.3)
S/o Shri Narayan,
Upper Division Clerk/DRT – III,
Jeevan Tara Building, Sansad Marg,
New Delhi – 110001.

...Applicants

(By Advocate: Mrs. Harvinder Oberoi)



VERSUS

Union of India, through

1. The Secretary
Ministry of Finance,
Department of Financial Services,
Sansad Marg, New Delhi-110 001.
2. The Registrar,
Debt Recovery Tribunal-III,
Jeevan Tara Building, Sansad Marg,
New Delhi – 110001.
3. The Secretary,
Department of Personnel,
Public Grievance & Pension,
New Delhi.

...Respondents

(By Advocates: Shri Satish Kumar)

O R D E R

Hon'ble Mr. R.N. Singh, Member (J):

In the present OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants have challenged the order dated 17.7.2014 (Annexure – A-2a) and further orders dated 27.5.2016 (Annexure A-2) and order dated 9.8.2016 (Annexure A-1) vide which the applicants have been refused the benefits of old Pension Scheme and have been denied the grant of the benefit of the Order/Judgment dated 1.12.2015 of Ahmedabad Bench of this Tribunal in OA 405/2012 in the matter of ***Bhavesh Prahladbhai Joshi and others vs. Union of India and others*** (Annexure A-11) in a case of identically



placed persons. The applicants have prayed for the following reliefs:-

- “(i) set-aside and quash Respondents’ orders dated 09.08.2016, Annexure – A-1; dated 27.05.2016, Annexure – A-2; and dated 17.07.2014, Annexure – A-2a, being arbitrary and badly vitiated as humbly submitted in the forgoing paras and further issue orders covering the applicants under the benefits of the Old Pension Scheme;
- (ii) direct/command the Respondents to modify and re-fix the absorption dates of the applicants, making it operative from the original date of joining on deputation in DRT of the applicants at par with the applicants of C.A.T. of Ahmedabad Bench in Bhavesh Praladhbai Joshi’s case;
- (iii) any other relief deemed fit and proper in the facts and circumstances of the case, may also be granted in favour of the applicant alongwith heavy costs against the Respondents in the interest of justice.”

2. The applicants have filed MA 2926/2017 seeking permission to file the aforesaid OA jointly and the same was allowed vide Order dated 20.1.2021. During the pendency of the present OA, the applicant No.2 has expired and accordingly legal heirs of applicant No.2 approached this Tribunal vide MA 2678/2020 praying therein for permission to come on record and the said MA was allowed by this Tribunal vide same Order dated 21.1.2021.



3. It is contended on behalf of the applicants that the applicants joined the services of Maharashtra Electronics Corporation Ltd., Mumbai (hereinafter referred to as 'MELTRON') as Lower Division Clerk on 4.8.1987, 12.10.1987 and 22.1.1993 respectively. Pursuant to the requisition of Respondent No.2, the applicants applied for deputation under them and on being selected, the applicant no.1 was appointed as Assistant and applicant nos.2 and 3 were appointed as Upper Division Clerk on deputation under the Respondent No.2. The MELTRON addressed a letter dated 30.10.2003 (Annexure-A-3), intimating the Respondent No.2 that it had been decided by the competent authority to close down the MELTRON and requested the respondents to absorb the applicants who were already on deputation under them. The said letter was followed by another letter dated 5.11.2003 (Annexure – A-4) reiterating their decision and request for absorption of the applicants. The applicants also made various representations for their absorption. However, vide letter dated 28.7.2005 (Annexure – A-5), Respondent No.1 led down guidelines for absorption of staff on deputation. It has been provided therein that relaxation of provisions in the existing Recruitment Rules as applicable to the employees of DRATs/DRTs, the employees from organisation other than the Central/ State Govt., who



have been appointed on Group 'B', 'C' and 'D' may be given an option as one time measure to opt for absorption against regular vacancies in the concerned DRATs/DRTs. The said letter further provides that the absorption proposal will be processed and order for absorption in each case will be issued by the concerned Chairperson of DRATs/DRTs. The proposal for absorption of the applicants was approved by the competent authority, which was conveyed vide letter dated 15.9.2005 (Annexure - A-6). The respondent No.2 issued Office Orders dated 26.10.2005 (Annexure - A-7 Colly.) regarding absorption of the applicants under them. The service details of the applicants in the present OA are as under:-

S. No.	Name	Parent Organisation	Date of joining in Parent Deptt./Post		Date of joining DRT on deputation	Post on which joined on deputation	Date of absorption in DRT
(1)	(2)	(3)	(4)		(5)	(6)	(7)
1	Sh. Pravin Dattatraya Patil	MELTRON	04.08.1987	LDC	14.05.2003	Assistant	05.10.2005
2	Sh. C.M. Watkar	MELTRON	12.10.1987	LDC	30.05.2003	UDC	26.10.2005
3	Sh. Kamlakar N. Hedau	MELTRON	22.01.1993	LDC	24.02.2003	LDC	26.10.2005

It is contended on behalf of the applicants that new Pension Scheme was made effective by the respondents w.e.f. 1.1.2004 and old Pension Scheme remained applicable only to such Central Govt. employees who were appointed under Govt. service on or before 31.12.2003. It is contended on behalf of the applicants that as all the



applicants were selected and appointed under the Respondent NO.2 on deputation in accordance with the provisions of the Recruitment Rules and by the competent authority well before 31.12.2003, the applicants were entitled to be considered and accorded the benefits of old Pension Scheme. However, the respondents had not accorded the benefits of old Pension Scheme to the applicants and the applicants preferred various representations. The applicants in such representations also brought to the notice of the respondents that though the order of absorption of the applicants had been issued after 31.12.2003, however, the applicants were appointed under the respondents by the competent authority in accordance with the provisions of the Recruitment Rules and the lender department also had asked and reminded the respondents herein for absorption of the applicants well before 31.12.2003. Merely, for the reasons that respondents had delayed in taking a final decision about absorption of the applicants and had delayed in issuing the orders of absorption of the applicants, the applicants could not be deprived of the benefits of old Pension Scheme. It had also been contended by the applicants in their representations that the benefits of MACP had been granted to them keeping in view the date of their initial



appointment under the respondent No.2 on deputation basis. Merely, for the reason that the order of absorption had been delayed by the respondents, the denial of benefits of old Pension Scheme to the applicants would be illegal and arbitrary. The applicants such representations were not considered and disposed of and, therefore, the applicants had approached this Tribunal vide OA No.2893/2012 and this Tribunal vide Order/Judgment dated 8.5.2014 (Annexure –A-10) disposed of the said OA with direction to the respondents therein to take a final decision in the case of the applicants initiated by them vide their communication dated 17.9.2020 and to communicate the same to all DRTs under them as early as possible but in any case within a period of six months from the date of receipt of a copy of such Order.

4. Similarly situated persons approached Ahmedabad Bench of this Tribunal vide OA No.405/2012 titled ***Bhavesh Prahladbhai Joshi and others vs. Union of India and others*** raising similar grievance and Ahmedabad Bench of this Tribunal granted the relief to the applicants therein vide Order/Judgment dated 1.12.2015 (Annexure – A-11). The said Order/Judgment reads as under:-

“1. Heard. The question is very simple. Applicants and others like them commenced



working with Debts Recovery Tribunal from 1996 to 1999 and from that period onwards were continuously working with the Debts Recovery Tribunal. They would say that following consent of the Ministry the other Benches have regularized the services and absorbed them as all of them have come from different source including many other PSUs and Government as the case may be. But apparently, after following an order of the Tribunal, they were absorbed w.e.f. 7.6.2005. By then the New Pension Scheme had come into effect. But then it is critical to note that the right to be absorbed had concretized for the applicant on the day others were absorbed, and that cannot be taken away as the respondent no.3 did not take any action in time inspite of the repeated request of the applicant to the Ministry for absorption prior to 23.4.2004. Their rights having been cognized when other similarly situated persons have been absorbed after they have worked from 1995 onwards or 1999 as the case may be. The applicants are to be included in the Old Pension Scheme and their absorption to be construed as beginning prior to the commencement of New Pension Scheme. The principles is that no man can be prejudiced for the mistake of another.

2. The OA is allowed with these directions.
No costs."

5. The aforesaid Order/Judgment of Ahmedabad Bench of this Tribunal was implemented by the respondents and the benefits were given to the applicants therein in the case of ***Bhavesh Prahladbhai Joshi*** (supra). However, the applicants in the present OA were treated differently and were not given the same benefits. The applicants made various representations, i.e., 19.2.2016 (Annexure - A-12). The respondent No.2 wrote



a letter dated 16.3.2016 (Annexure A-13) to the respondent NO.1 to grant the benefits to these applicants also in line with the applicants in **Bhavesh Prahladbhai Joshi**'s case (supra). However, in spite of applicants' further representations dated 11.5.2016 (Annexure A-8), the respondents issued the impugned communications. Therefore, the present OA.

6. Pursuant to notice from this Tribunal, the respondents have filed their counter reply and the applicants have filed certain latest OMs etc.

7. Learned counsel for the applicants has invited our attention to service profile of the applicants in the case of **Bhavesh Prahladbhai Joshi** (supra) from the representation dated 23.8.2016 (Annexure A-15) and the same reads as under:-

DRT-I, Ahmedabad employees

S. No.	Name of the employee	Designation at the time of absorption	Date of Joining	Name of the Present Organisation	Date of absorption
1	Sh. B.P. Joshi	Assistant	19.08.1996	Gujrat Co-op Oil Seeds Ltd.	07.06.2005
2	Sh. S.J. Vaghel	Stenographer Gr. 'C'	01.04.1999	Civil Supplies Corporation Ltd.	07.06.2005
3	Sh. G.J. Dave	Assistant	05.10.1999	Gujrat Co-op Oil Seeds Ltd.	07.06.2005
4	Sh. R.N. Dave	Accounts Assistant	11.10.1999	Civil Supplied Corporation Ltd.	07.06.2005
5	Sh. Anil Sharma	Court aster	05.10.1999	Gujrat Co-op Oil Seeds Ltd.	07.06.2005
6	Sh. A.P. Nimje	LDC	15.10.1999	Civil Supplies Corporation Ltd.	07.06.2005
7	Sh. O.P. Pende	UDC cum Cashier	31.12.2002	Cement Corporation of India Ltd.	07.06.2005

8. Learned counsel for the applicants has argued that once the applicants have been appointed under the respondent No.2 before the cut off date, i.e., 31.12.2003 on deputation in accordance with the relevant Recruitment Rules by the competent authority and the process of their absorption has also started before such cut off date in as much as lender department has issued letters and reminders for absorption of the applicant before such cut off date, the delay at the end of the respondents in taking the decision and issuing the orders of absorption shall not deprive the applicants the benefits of old Pension Scheme. Mrs. Harvinder Oberoi, learned counsel for the applicants, has further argued that once the issue involved in the present OA has already been decided by the Ahmedabad Bench of this Tribunal in the case of similarly placed persons, the respondents being model employer is duty bound to extend the same benefits to the present applicants also without compelling the applicants herein to approach this Tribunal again. In this regard, she places reliance on the law laid down by the Hon'ble Apex Court in the case of **Amrit Lal Berry vs. CCE**, reported in (1975) 4 SCC 714, wherein it has been ruled as under:-

“We may, however, observe that when a citizen aggrieved by the action of a Government Department has approached the Court and





obtained a declaration of law is his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court.”

She has further placed reliance on the law laid down by the Hon'ble Apex Court in the case of ***Uttaranchal Forest Rangers” Asso. (Direct Recruit) vs. State of UP.***, reported in (2006) 10 SCC 346, wherein it has been ruled as under:-

“It was observed by this court in the case of State of Karnataka & Ors v. C. Lalitha, (2006) 2 SCC 747, that, "Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently.”

Reliance has also made by the learned counsel for the applicants on the Order/Judgment of the Full Bench of this Tribunal at Bengaluru in the case of ***C.S. Elias Ahmed & Ors. vs. Union of India and Ors.*** in OA No.451 and 541 of 1991 wherein it was held that “the entire **class** of employees who are similarly situated are required to be given the benefit of the **decision** whether or not they were parties to the original writ.” On behalf of the applicants, it is further argued that word ‘new entrant’ has got a definite meaning ‘a person, who enters



recently'. In the present case, the applicants have entered the service of the respondents' department well before the cut off date, i.e., 31.12.2003 in accordance with the relevant Recruitment Rules and with the approval of the competent authority. In this regard, she has placed reliance on the Order/Judgment of the Hon'ble High Court of Madras in the case of **Union of India vs. K. Punniyakotti**, reported in 2014 (2) CTC 777, wherein it has been held as under:-

"17. The word "new entrant" has got a definite meaning, a person, who enters recently". A person already in service either as contingent staff or temporary staff continuously and absorbed in permanent establishment on or after 01.01.2004 cannot be termed as "new entrant" into service. The new Pension Scheme can be applied only to persons appointed for the first time as casual or temporary or permanent employee on or after 01.01.2004."

In such view of the facts and law, learned counsel for the applicants has argued that the applicants are entitled for the relief sought in the present OA as they deserve to be treated and extended the same benefits as the applicants in the case of **Bhavesh Prahladbhai Joshi** (supra) were treated and benefits were extended to them.

9. *Per contra*, learned counsel for the respondents though does not dispute the fact, however, has submitted that the applicants are not entitled for the relief as the Order/Judgment of the Ahmedabad Bench of this



Tribunal was applicable to the applicants in the case of ***Bhavesh Prahladbhai Joshi*** (supra) and not to all including the applicants herein. He has further submitted that Government also does not permit counting of service rendered under the public sector undertaking for financial benefits in the Govt. of India. He has further added that in view of the instructions of DOP&T's OM dated 26.7.2005, the benefits of past service was not allowed and the applicants were placed under the new Pension Scheme as being the new incumbents. Though the learned counsel for the respondents has not argued and raised the objection of limitation, however, while going through the counter reply, we find that the respondents in their counter reply have taken an objection that the OA is barred by limitation, delay and laches. It is asserted therein in the counter reply that in view of the provisions of Section 21 of the Administrative Tribunals Act, 1985, if the applicants were having any cause of action at all, the applicants were required to approach this Tribunal within one year of such cause of action in view of provisions of Section 21 of the Act *ibid*. The reliance in this regard is made on the law laid down by the Hon'ble Apex Court in the case of ***S.S. Rathore vs. State of M.P.***, reported in AIR 1990 SC 120. It is further asserted that representation repeatedly given to various



authorities do not furnish fresh cause of action. Reliance in this regard is made on the judgment of the Hon'ble Apex Court in the case of **State of Haryana and others vs. Miss Ajay Walia**, reported in JT 1997(6) SC 592. Counter reply also contains that the Hon'ble Supreme Court has laid down in the case of **Ex-Captain Harish Uppal vs. UOI**, reported in JT 1994 (3) 126, that delay defeats equity and the court should help those who are vigilant and not those who are indolent. Reliance in this regard is also made to the decisions of the Hon'ble Apex Court in the case of **State of Punjab vs. Gurdev Singh**, reported in (1991) 4 SCC 1 and **UOI vs. Ratan Chandra Samanta**, reported in JT 1993 (3) SC 418 etc. it is also asserted in the counter reply that the Hon'ble Supreme Court in the case of **D.C.S. Negi vs. UOI** in SLP (C) CC No.3709/2011 has ruled that cases which are time barred in view of the provisions of Section 21 of the Administrative Tribunals Act, 1985 should not be admitted. However, the learned counsel for the respondents does not dispute the fact that the applicants in the case of **Bhavesh Prahladbhai Joshi** (supra) were similarly placed. They were also working in public sector undertakings prior to joining the respondents/DRT on deputation and they also joined the respondents on deputation on various dates during the period from



19.8.1996 to 31.12.2002 and all of them were absorbed w.e.f. 7.6.2005. It is also not disputed by the respondents that the Order/Judgment of the Ahmedabad Bench of this Tribunal in ***Bhavesh Prahladbhai Joshi***'s case (supra) is a judgment in *rem* and directions therein was for the applicants therein as well as for similarly placed persons and the said judgment has attained finality.

10. In rejoinder, learned counsel for the applicants has referred to the OMs dated 17.2.2020 and 11.6.2020 issued by the Ministry of Personal, Public Grievances and Pension, Department of Pension and Pensioners' Welfare wherein it is observed that in many of cases process for recruitment had been completed before 1.1.2004 but the employee(s) joined the Government service on or after 1.1.2004, also the cases where the selection process was over and offer of appointment were issued to some before 1.1.2004 and where as offer of appointments were issued on or after 1.1.2004 due to administrative reasons or constrains etc. and keeping in view various situations, the matter has been required to be considered afresh. The OM No.28/30/2004-P&PW (B) dated 11.6.2020 also has been issued keeping in view the representations received by the Department from various employees who joins



under NPS after 1.1.2004 but before 28.10.2009. Learned counsel for the applicants has argued that from the aforesaid OMs, it is evident that Nodal department itself has considered the representations upto the year 2020 keeping in view various representations being received from different departments and employees and, therefore, the present OA is within limitation. She has further argued that similarly placed persons approached the Ahmedabad Bench of this Tribunal in 2012 vide OA No.405/2012 and the applicants have approached this Bench of the Tribunal in 2012 vide OA No.2893/2012 and the Ahmedabad Bench passed the Order/Judgment on 1.12.2015 in the said OA whereas this Tribunal passed the Order on 8.5.2014 in the OA of the applicants. She has also argued that if the judgment dated 1.12.2015 has been given effect to in the case of applicants in ***Bhavesh Prahladbhai Joshi's case*** (supra), there has been no reason or justification for the respondents not to extend the same benefits to the applicants herein as well and that too, when this Tribunal has directed the respondents vide Order/Judgment dated 8.5.2014 in the first round of litigation at the end of the applicants herein to consider the applicants' claim and to pass an appropriate order. She has further submitted that the order dated 9.8.2016 and/or impugned orders are cryptic



and without any reason and, therefore, the same are liable to be quashed.

11. We have heard the learned counsels for the parties and we have also perused the pleadings on record.

12. From the aforesaid facts, particularly the service profile of the applicants in the present OA and those of the applicants in ***Bhavesh Prahladbhai Joshi***'s case (supra), it is evident that applicants in the present OA are similarly placed as the applicants in the case of ***Bhavesh Prahladbhai Joshi*** (supra). It is an admitted fact that the benefits of the Order/Judgment of the Ahmedabad Bench of this Tribunal in the case of ***Bhavesh Prahladbhai Joshi*** (supra) has been accorded to the applicants therein. It is also undisputed that for the purpose of grant of benefit of MACP, the respondents have counted the services of the applicants in the relevant grade from the date of their initial appointment on deputation basis. However, for the benefit of old Pension Scheme, the respondents have treated the present applicants differently keeping in view the dates of their absorption, i.e. in the year 2005. It is also found that the applicants have been appointed under the respondents initially in the year 2003 may be on deputation basis, however, in accordance with the



relevant rules and instructions and on being selected therefor by the respondents and the process of their absorption has also started in the year 2003 keeping in view the letters dated 30.10.2003 and 5.11.2003 from the landing department, i.e., MELTRON. Moreover, the respondents have taken a conscious decision to consider the representations of the various employees and from various departments and vide a policy decision vide OM No. 28/30/2004-P&PW (B) dated 11.6.2020. In view of the matter, we are of the considered view that the objection taken by the respondents in their counter reply to the effect that the present Original Application is barred by limitation, delay and laches, is not sustainable in the eyes of law. The judgments rendered and relied upon by the respondents in their counter reply to support their such objection are not applicable in the facts and circumstances of the present case. We also find that the action of the respondents in treating the applicants differently than the similarly placed applicants in the case of ***Bhavesh Prahladbhai Joshi*** (supra), is arbitrary, discriminatory and in violation of provisions of Article 14 of the Constitution of India. Impugned action/order(s) of the respondents is violation of law laid down by the Hon'ble Apex Court in ***Amrit Lal Berry*** (supra), ***Uttaranchal Forest Rangers" Asso. (Direct Recruit)***



(supra), ***Inderpal Yadav*** vs. ***Union of India***, reported in (1985) 2 SCC 648, and Full Bench Judgment of this Tribunal in ***C.S. Elias Ahmed*** (supra).

13. In view of the aforesaid, the OA is allowed. The impugned orders are quashed and set aside. The respondents are directed to consider the claim of the applicants afresh and extend the benefits inline as extended to the applicants in the case of ***Bhavesh Prahladbhai Joshi*** (supra). The respondents are further directed to pass the necessary orders in this regard and release the benefits as required after passing of such order(s) as expeditiously as possible and in any case within 12 months of receipt of a copy of this Order.

14. The present OA is allowed in the aforesaid terms. No order as to costs.

(R.N. Singh)
Member (J)

(A.K. Bishnoi)
Member (A)

/ravi/