

**CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH, LUCKNOW**

**Reserved on 10.08.2015.**

**Pronounced on 14-08-2015.**

**Original Application No./332/00309/2011**

**Hon'ble Mr. Navneet Kumar, Member (J)**

Kushal Kumar Singh, aged about 36 years, son of Shri Phuleshwar Singh, resident of-2/414, Jankipuram Extension, Lucknow.

**-Applicant.**

**By Advocate: Sri. Praveen Kumar.**

**Versus.**

1. Union of India, through the Controller General of Defence Accounts, Ulan Bater Road, Palam, Delhi Cantt.
2. The Principal Controller of Accounts, Kolkata.
3. The Controller of Finance & Accounts (FYS), Medak Distt. Andhra Pradesh.
4. The Principal Controller of Defence Accounts (Air Force), 107-Raipur Road, Dehradun.

**-Respondents.**

**By Advocate: Sri P.K. Singh.**

**ORDER**

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

(1). *To quash the impugned order dated 30.09.2010 and order dated 13.10.2010 contained as Annexure no.A-1 and A-1A to this OA and other consequential orders, if any, after summoning original from the respondents with all consequential benefits.*

(2). *To extend all consequential benefits after treating the applicant under Old Pension Scheme.*

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(3). *Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.*

(4). *Cost of the present case."*

2. The applicant claims that he should be granted the benefit of Old Pension Scheme as the police verification of the applicant was received by the respondents way back in August, 2003. But, on account of delay on the part of the respondents, the applicant cannot be appointed as Senior Auditor as such, he was denied the benefit of Old Pension Scheme and the respondents have passed an order as contained in Annexure 1 and 1A to the OA through which, it is indicted that the Old Pension Scheme is not available in the case of the applicant and he will be governed by New Pension Scheme.

3. The learned counsel for the applicant has relied upon the judgment of coordinate Bench (Jaipur) of the Tribunal passed in O.A.No.272/2011 through which it has been indicated that the Tribunal while deciding the OA has held that the applicant cannot be denied the benefit, which is accrued to him and has also indicted that mistake committed by the employer cannot be recoiled upon the employee.

4. The learned counsel for the applicant also indicated that the respondents have delayed the process of appointment and as such, the applicant could not be appointed prior to 01.01.2004 and is placed in the New Pension Scheme instead of Old Pension Scheme.

5. On behalf of the respondents, detailed reply and Supplementary Counter Affidavit have been filed. The respondents have indicated that for the first time the applicant was informed vide letter dated 24.09.2002 in reference to his application for the Combined Main Graduate Level Examination, 1999. Subsequently, vide letter dated 14.02.2003, the applicant was asked to submit the Attestation Forms and other prescribed Forms/Documents. Finally, vide order dated 03.03.2004, the applicant was offered appointment on the post of Temporary Auditor in Clerical grade in the revised scale of Rs.4000-6000 in the department and the applicant was also directed to report for duty to the office of the Controller of Finance & Accounts, Ordnance Factory, Eddumailaram, Medak District (AP) within 30 days from the date of receipt of the communication. It was also made clear by the respondents that incase the applicant failed to report for duty within the above period, the offer of appointment would be treated as cancelled.


6. The learned counsel for the respondents also indicted that since the applicant was given appointment after 01.01.2004 as such, New Pension Scheme is applicable upon the applicant and the case cited by the applicant of Jaipur Bench of the Tribunal in O.A.No.272/2011 is not at all applicable in the case of the applicant. The Supplementary Counter Affidavit filed by the respondents also been perused.

7. On behalf of the applicant, Rejoinder Affidavit is filed mainly to the Counter Affidavit filed by the respondents and reiterated the contents of the OA, are

perused. No Supplementary Rejoinder Affidavit is filed by the applicant.

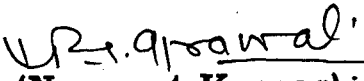
8. I have heard the learned counsel for both the parties and perused the material available on record.

9. The applicant applied in terms of Notification issued by the Staff Selection Commission in the year 1999 for appearing in the Combined Main Graduate Level Examination, 1999. Consequently, he appeared in the examination and the applicant was declared successful in the examination having All India Rank of 1166. The applicant pointed-out that one Sri Prem Kant Jha, who is having All India Rank 1259, was given appointment by the respondents vide letter dated 02.11.2002, but the applicant was issued appointment order subsequently. It is undisputed that the applicant was asked by the respondents vide letter dated 14.02.2003 by requiring certain formalities, which the applicant completed without loss of time and the authorities have also received Police verification report on 28.08.2003. It is also indicated that the appointment order of the applicant was kept pending for more than six months and the respondents finally issued appointment order on 03.03.2004 through which the applicant was offered a post of Temporary Auditor in Clerical grade in the department. He was also directed to report for duty to the office of the Controller of Finance & Accounts, Ordnance Factory, Eddumailaram, Medak District (AP) within 30 days from the date of receipt of the communication. It is also made clear by the respondents, therein, that incase the applicant failed to report for duty within the above period, the offer of appointment would be treated as



cancelled. It is indicated that from August, 2003 till March, 2004 the applicant was himself responsible for not responding in response to his appointment knowingly, though this fact was very well in his knowledge that another person namely Sri Prem Kant Jha, who was having All India Rank 1259 was given appointment on 28.10.2002. It is also well settled principles that if a person slept-over his right cannot be given the benefits as laid down by the Hon'ble Apex Court in the case of ***High Court of Judicature of Patna v. Madan Mohan Prasad, (2011) 9 SCC 65*** that similar relief cannot be granted to a person, who slept over his right. Since, the applicant has neither preferred any representation nor challenged the same before any Forum his claim for appointment while other person namely Sri Prem Kant Jha was given appointment in 2002 the benefit cannot be accorded to the applicant. The case law so cited by the applicant is not applicable in the case of the applicant.

10. After considering the submissions made by the learned counsel for both the parties, I do not find any ground to interfere in the present OA. Accordingly, the OA is dismissed. No order as to costs.

  
**(Navneet Kumar)**  
**Member-J**

Amit/-