

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

OA No.668/2017

Reserved on: 14.12.2017
Pronounced on: 15.12.2017

Hon'ble Mr. Uday Kumar Varma, Member (A)

Dr. Mala Rani Gupta, Group-A Doctor
W/o Dr. Prem Rajan, Aged about 56 years
R/o D-9, Block-B,
MCD Flats, Defence Colony,
New Delhi – 110 024. ...Applicant

(By Advocate: Mr. Aprub Lal)

Versus

East Delhi Municipal Corporation
Through its: Commissioner,
Dr. Mohanjeet Singh, IAS
419, Udyog Sadan,
Patparganj Industrial Area,
Delhi – 110 096. ...Respondent

(By Advocate: Sh. R.N. Singh)

O R D E R

The applicant in this OA is before us regarding her grievance that she has been placed in the New Pension Scheme which became operational from 01.01.2004 although she should have been given the benefit of Old Pension Scheme, which ceased to be in operation from 31.12.2003, as has been granted even to her juniors.

2. The facts of the case emanating from the OA are that the applicant in response to the advertisement issued by the Union Public Service Commission [hereinafter referred

to as UPSC] in January, 2003 applied for the post of Specialist Grade-II (Anesthesia). Subsequently, the UPSC, vide letter dated 31.07.2003, prepared the merit list and sent its recommendations of the selected candidates to the respondent for appointment vide letter dated 11.08.2003. The respondents, after verification of documents, issued offer of appointment to the applicant on 24.03.2004 to the post of Specialist Grade-II (Anesthesia) whereas her juniors were given offer of appointment in 2003 itself. The applicant vide office order dated 23.07.2004 was appointed on regular basis w.e.f. 17.08.2004.

3. The case of the applicant is that though she was selected in the year 2003 itself i.e. before introduction of the New Pension Scheme effective from 01.01.2004, but due to delay in verification of documents by the respondents themselves, she has been deprived of the benefit of Old Pension Scheme whereas those who were allowed to join in the year 2003 itself, had been given the benefit of Old Pension Scheme and, therefore, discriminatory treatment has been meted out to her. It is also the case of the applicant that even her juniors have been allowed to avail the benefit of Old Pension Scheme but she has been ignored. In support of her claim, the applicant has relied upon the decision of this Tribunal in

an identical matter titled as ***Dr. Alka Chandra vs. Municipal Corporation of Delhi & Anr.*** [OA No.1607/2009 decided on 23.10.1999]. Therefore, she prays that the instant OA may be allowed in the same terms.

4. The respondents have filed their counter affidavit stating that the applicant initially joined on 17.08.2004 as Specialist Grade-II (Anaesthesia) in MCD on the recommendation of UPSC vide letter dated 11.08.2003. It is further submitted that the caste certificate produced by the applicant was sent to the office of Collectorate, District Varanasi, Uttar Pradesh for verification vide letter dated 22.08.2003 but when no response was received from the said authority, the respondents sent reminders dated 14.01.2004, 06.02.2004 and 26.02.2004 for the purpose. Finally, the concerned authority, after verifying the caste certificate of the applicant, sent the verification report to the MCD vide order dated 03.03.2004. The respondents, therefore, submit that after completing all the requisite formalities e.g. issuance of offer of appointment, medical examination, verification of character and antecedents of candidates etc., appointment letter to the post of Specialist Grade-II (Anaesthesia) on regular basis on probation for two years was issued to the applicant vide letter dated

23.07.2004 with direction to her to report to Addl. Dy. Commissioner (Health) by 20.08.2004 and, on her request, she was allowed to join her duties w.e.f. 17.08.2004. It is the case of the respondents that since the applicant joined the respondents w.e.f. 17.08.2004 i.e. after 31.12.2003, she was covered under the New Contributory Pension Scheme as the Old Pension Scheme was applicable only to those who had joined the services on or before 31.12.2003. The respondents submit that the instant OA is misconceived and lacks merits and, therefore, it deserves to be dismissed.

5. I have gone through the pleadings available on record and heard the learned counsel for the parties.

6. Facts of the case are admitted by the parties. However, the only ground taken by the respondents in not granting the benefit of Old Pension Scheme to the applicant is that she had joined the respondents on 17.08.2004 i.e. after 31.12.2003 by which date New Pension Scheme had come into force and, therefore, she was covered under the New Pension Scheme only.

7. For proper adjudication of the case, it is necessary to visit the decision of this Tribunal in ***Dr. Alka Chandra vs. Municipal Corporation of Delhi & Anr.*** (supra), relied

upon by the applicant, which is stated to be an identical matter. Perusal of the decision aforesaid reveals that the applicant therein Dr. Alka Chandra had also been selected in the same batch as the applicant herein on recommendation of the U.P.S.C. for appointment to the post of Specialist Grade II in the M.C.D. vide letter dated 31.07.2003. She also joined the respondents department after 31.12.2003 i.e. on 12.04.2004 and was accordingly included in the CPF scheme. When she came to know about the date of joining of the candidates selected along with her for the post of Specialist Grade II and even persons junior to her in the merit list had been allowed to join on or before 31.12.2003, she filed the OA. The same arguments, as have been advanced in the instant case, were advanced in the case of Dr. Alka Chandra (*supra*) also. The respondents stated that the U.P.S.C. had desired that the caste certificate should be verified in case of SC/ST/OBC candidates. The Applicant's caste certificate was, therefore, sent on 22.08.2003 to the concerned officer, who issued the certificate, for its verification. The letter verifying the caste certificate was received on 20.01.2004. The Respondents urged that the Old Pension Scheme was applicable only to the employees, who joined the service of the Respondents on or before 31.12.2003. All those who

joined later would be covered by the New Contributory Pension Scheme. Taking all these into consideration, the Tribunal allowed the claim of Dr. Alka Chandra for being covered under the Old Pension Scheme on the following reasoning:-

“9. Para 3 and 8 of UPSCs letter dated 31.07.2003 recommending the selected candidates are extracted below:-

“The Commission recommended 10 candidates as per Annexure-A to this letter arranged in the order of merit on an initial pay as indicated therein for appointment to the posts of Specialists Grade-II (Anaesthesia) in Municipal Corporation of Delhi. The recommended candidates have also been informed about their selection - Dr. Parmita Chandrakanta Hazarika, Dr. Alka Chandra, Dr. Krishna Kumar, Dr. Mala Rani Gupta, Dr. Shri Krishan Chand, Dr. Aatul Kishore Kapoor and Dr. Dharam Singh Meena (Sl. No. 01, 04, 06, 07, 08, 09 and 10 respectively) claimed to belonged to Scheduled Caste/Scheduled Tribe/OBC communities. Their claim to belong to these communities have been provisionally accepted on the basis of the original certificate submitted by them at the time of interview. Copies of these certificates can be seen in their respective applications dossiers. As instances have occurred where candidates obtained and produced Scheduled Caste/Scheduled Tribe/OBC certificates even though they did not really belong to these categories, the Government may, verify further the veracity of these documents before issuing offers of appointment to the candidates. In case of issuing offer of appointment provisionally pending verification of the veracity of these documents, the instructions as contained in the Department of Personnel & Training O.M. No. 36012/6/88-Estt (SCT) (SRD-III) and O.M. No. 36033/9/93-(SCT) dated 24.04.1990 and 10.05.1995 respectively should be followed. It is noticed that though the respondents had been asked to verify the certificates before issue of offer of appointment, there was also a mention about issue of offers provisionally. Further, the candidates case for verification of her caste status was sent to the concerned SDM vide respondent letter dated 22.08.2003 itself and the delay in obtaining the verification report can be attributed only to the executive authorities concerned and to the Respondents who failed to pursue the matter till 14.01.2004 when the SDM was reminded. Certainly the applicant cannot be made to suffer for delay not

attributable to her. Viewed in this context, the issue of offer of appointments to others in the same batch, and some junior to her, while withholding the same in the case of the applicant would amount to discrimination, particularly when doing so resulted in her being declared ineligible for the pension benefits under the Old Pension Scheme. If such delay was normal, though this is evidently not so, because once the SDM was reminded, the certificate verification report was received within a week, the respondents would have issued the appointment orders of the applicant along with the others by mentioning that the appointment was provisional subject to the confirmation and verification of the relevant certificates in question.

10. In the light of the above, and particularly as persons of the same batch of recruitment and some junior to the applicant had been allowed to join before 31.12.2003 and were admitted to pension as per the Old Pension Scheme, not allowing the same benefit of this Scheme to the applicant is discriminatory. Accordingly, the OA is allowed and the impugned order dated 4.5.2009 is quashed and set aside. The respondents are directed to allow the applicant to join the Pension Scheme as per the rules prevailing at the time of her final selection and recommendation for appointment, i.e, July, 2003, and issue orders accordingly. Appropriate orders should be issued expeditiously and definitely within four weeks of receipt of this order. There shall be no order as to costs.”

8. Having gone through the fact and circumstances of the case, I am of the considered opinion that the applicant's case is fully covered by the decision in **Dr. Alka Chandra vs. Municipal Corporation of Delhi & Anr.** (supra) as Dr. Alka Chandra was also one of the candidates of the same selection, she joined after 31.12.2003, her juniors were also granted the benefit of Old Pension Scheme and resultantly her OA was allowed. As all such arguments advanced in the instant OA have not been controverted by the respondents except that the

applicant had joined after 31.12.2003, therefore, she was not entitled for the benefits of Old Pension Scheme, which argument has also been taken care by the Tribunal while allowing the aforesaid OA.

9. In view of the above discussion, I am convinced that the instant OA is fully covered by the decision of this Tribunal in ***Dr. Alka Chandra vs. Municipal Corporation of Delhi & Anr.*** (supra) and, therefore, the same is allowed with a direction to the respondents to allow the applicant to join the Old Pension Scheme as per the rules and issue necessary orders accordingly within a period of two months from the date of receipt of certified copy of this order. No costs.

(Uday Kumar Varma)
Member (A)

/Ahuja/