

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 1624/2015

New Delhi, this the 16th day of August, 2016

HON'BLE MR. P.K. BASU, MEMBER (A)

Pankaj Kumar Singh, JDONA
Aged about 41 years,
S/o Shri Birendra Narain Singh,
R/o Qtr. No. 616, Sec-3,
R.K. Puram, New Delhi. .. Applicant

(By Advocate : Shri M.K. Bhardwaj)

Versus

Union of India & Ors. through

1. The Secretary,
Ministry of Defence,
South Block, New Delhi.
2. Directorate General of Naval Armanent,
Naval Headquarters,
West Block No.5,
R.K. Puram, New Delhi
Through its Director General.
3. Union Public Service Commission,
Dholpur House, Shahjahan Road,
Through its Secretary. .. Respondents

(By Advocate : Shri Piyush Gaur)

ORDER (ORAL)

The facts of the case are that the applicant appeared in the Engineering Service Examination, 2001 held by the Union Public Service Commission (UPSC). In May, 2012, UPSC declared the final result in which the name of the applicant was included. Out of five

of the selected candidates who were nominated by Ministry of Railways for appointment in Indian Naval Armament Service (INAS), three were issued letter on 09.08.2002 and they all joined by October, 2003. The New Pension Scheme of the Govt. of India came into effect on 01.01.2004. Therefore, all three recruits became entitled for Old Pension Scheme.

2. The applicant along with another person were issued letter dated 03.01.2003, when the Railways forwarded the applicant's name to INAS. Thereafter, the matter kept pending for want of verification of character and antecedents from the respective District Collector. This was received finally on 04.03.2004 and the applicant was issued his appointment letter on 17.03.2004. The applicant requested for extension of joining time upto 30.07.2004 and finally he joined on 30.07.2004.

3. The case of the applicant is that had there not been any delay by the Railways and other Govt. functionaries, viz. the District Collector, who was supposed to send verification of character and antecedents, he would have joined before 01.01.2004 along with three other candidates, whose orders have been issued on 09.08.2002 by the Railways. But because of delay on the part of the Govt. functionaries, he could only join after 01.01.2004 and, as a result, the respondents have denied benefit of Old Pension Scheme to him.

4. The learned counsel for the applicant states that in O.A. Nos.1795/2011 and 3719/2009, the Tribunal has passed orders treating the applicants in those OAs at par with their batchmates as regards date of appointment and seniority. Those were cases, in which there was a delay in appointment of the applicants as a result of litigation in various courts.

5. The learned counsel for the respondents raised the question of limitation stating that the applicant had filed a representation dated 30.08.2004, which was considered and rejected by the respondents on 26.04.2005. The O.A. has been filed on 28.04.2014, i.e. after a gap of almost 10 years, and neither have any application for condonation of delay is filed.

6. The learned counsel for the respondents relies on the judgment in **State of Karnataka and Others Vs. S.M. Katrayya & Ors.**, (1996) 6 SCC 267, in which the Hon'ble Supreme Court has held that “In case, the explanation for delay is that the applicant came to know the relief granted by the Tribunal later and, thereafter, only he filed the petition, not a proper explanation.”

7. Learned counsel also relies on the judgment in **Union of India Vs. M.K. Sarkar**, (2010) 2 SCC 59, in which the Hon'ble Supreme Court has held that “when a belated representation in regard to a ‘stale’ or ‘dead’ issue/dispute is considered and decided, in

compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the dead issue or time barred disputed.”

8. Learned counsel for the respondents also raised the question of non-joinder of parties. It is stated that why the Railways issued the letter in respect of three candidates on 09.08.2002 and for the applicant on 03.01.2003 can be answered only by the Railways, who have not been made a party. Moreover, the District Collectors, because of whom there was a delay in issuing appointment letter, has also not been made a party. Learned counsel, however, pointed out that all efforts were made throughout the period by INAS to get the verification of character and antecedents.

9. The learned counsel for the applicant counters this argument of limitation by citing that in WP(C) No.3827/2012 - **Navin Kumar Jha Vs. Union of India & Ors.** While pronouncing the judgment on 2nd November, 2012, it is held that “Delay in conducting medical examination may not be held against the petitioner and he would be entitled to benefit of Old Pension Scheme”. Moreover, it is also stated that the respondents themselves have considered his case and vide order dated 27.08.2013 his representation had been forwarded to Headquarters of Navy with a recommendation and a reminder was sent vide letter dated 18.12.2014.

10. Heard the learned counsel and perused the various pleadings as well as judgments.

11. We do not agree with the learned counsel for the applicant that orders of this Tribunal in O.A. Nos.1795/2011 and 3719/2009 are applicable as those were cases in which the facts and circumstances were completely different. However, from the chronology of events filed by the respondents in para 5 of their reply, it appears that though the Ministry of Railways had allotted the applicant to INAS, but due to procedural delay in getting the verification of character and antecedents from District Collector, the matter got postponed and appointment letter could be issued only on 17.03.2004, i.e. after 01.01.2004, when the applicant could have got the benefit of Old Pension Scheme.

12. We also reject the argument of the respondents regarding delay/limitation because the applicant approached this Tribunal only when finally they did not finalise his case despite letter dated 27.08.2013 and reminder dated 18.12.2014. We also reject the arguments of the respondents that this O.A. is not maintainable because of non-joinder of parties as the Railway had issued the letter dated 03.01.2003. Thereafter, the matter was with INAS and the District Collector. We accept the defence of the respondents – INAS that it is not their fault and despite several reminders the District Collector did not send the verification. However, the bottom

line is that for no fault of the applicant and even though his allotment letter to INAS was issued more than almost a year back, he has been denied Old Pension Scheme, which his batchmates are drawing.

13. As a result, this O.A. is allowed and the respondents are directed to treat the applicant as beneficiary of Old Pension Scheme and issue an order accordingly, within a period of 90 days from the date of receipt of a certified copy of this order. I also place on record my appreciation for the excellent assistance provided by Shri Piyush Gaur, learned counsel for the respondents. No order as to costs.

(P.K. Basu)
Member(A)

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