

**Central Administrative Tribunal
Principal Bench**

OA-1022/2018

MA-1147/2018

MA-1148/2018

New Delhi, this the 08th day of March, 2018

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

1. Balbir Yadav, TGT, Group 'B',
Employee ID-20040315, Aged about 56 years,
S/o Shri Bodu Ram Yadav,
R/o M52, TF, Gali No. 7,
Som Bazar Road, Rajapuri,
Uttam Nagar, New Delhi-110059.
2. Harendra Kumar, TGT, Group 'B',
Employee ID-20060105, Aged about 47 years,
S/o Shri Kishori Lal,
R/o H.No. 188, Radhey Shyam Vihar Phase-I,
Murad Nagar, Dist-Ghaziabad(UP) 201206.
3. Moti Ram Yadav, TGT, Group 'B',
Employee ID-20102023, Aged about 40 years,
S/o Shri Lal Chand,
R/o VPO-Daulatpur, Nazafgarh,
New Delhi-110043.
4. Pardeep Kumar, TGT, Group 'B',
Employee ID-20040314, Aged about 40 years,
S/o Shri Jagdish Chander,
R/o RZ-D-102, Prem Nagar, Nazafgarh,
New Delhi-110043.
5. Anil Kumar Rang, TGT, Group 'B',
Employee ID-20060109, Aged about 47 years,
S/o Shri Daya Chand Rang,
R/o Vill2. Badusarai, PO-Chhawla,
New Delhi-110071.
6. Parveen Yadav, TGT, Group 'B',
Employee ID-20040246, Aged about 40 years,
W/o Shri Karamvir Singh,
R/o VPO-Daulatpur, Nazafgarh,
New Delhi-110043.
7. Deepa Kumar, TGT, Group 'B',
Employee ID-20040312, Aged about 49 years,
D/o Shri Devi Singh,
R/o H. No. L-1/A, St. No. 2, Jaiprakash Nagar,
West Ghonda, Delhi-110053.

8. Neeraj Kumar Sharma, TGT, Group 'B', Employee ID-20050021, Aged about 442 years, S/o Shri Hari Shanker Sharma, R/o D-281, Ganga Vihar, delhi-110094
9. Chandrakanta, TGT, Group 'B', Employee ID-20040318, Aged about 42 years, w/o shri Pavan Kumar, R/o 1852, D.A. Flats, Type 2, Sindhora Khurd, Gulabi Bagh, Delhi-110007.
10. Anita Rani, TGT, Group 'B', Employee ID-20040270, Aged about 44 years, w/o Shri Ranbir Singh, r/o D-41,fourth Floor, Lane No. 1, East Vinod Nagar, Delhiih-110091.
11. Devender Kumar, TGT, Group 'B', Employee ID-20040267, Aged about 41 years, s/o Shri Ranjeet Singh, R/o A-54/8, Dhangar Niwas, Gali No. 3, Shivaji Road, Near Sharda Mandir, North Ghonda, Delhi-110053.
12. Subhash Chandra, PGT, Group 'B', Employee ID-20060129, Aged about 42 years, S/o Sh. Heera Lal, R/o UG-1, Plot No. 569, Shalimar Garden Extn-1, Sahibabad, Ghaziabad (UP) 201005.
13. Sanjeev Kumar, TGT, Group 'B', Employee ID-200707718, Aged about 40 years, s/o Shri Phool Singh, R/o H.No. D-2/215, Nand Nagri, Delhi-110093.
14. Saroj Bala, TGT, Group 'B', Employee ID-20040265, Aged about 47 years, W/o Shri Yatendra Kumar, R/o H.No. 9/1036, Vashundhara, Ghaziabad (UP) 201010.
15. Sarita Devi, TGT, Group 'B', Employee ID-20060096, Aged about 46 years, w/o Shri Anil Kumar Sandhu, R/o H.No. 330-331, 2nd Floor, Pocket-4, Sector-22, Rohini, Delhi-110086.
16. Suman Lata, TGT, Group 'B', Employee ID-20040341,Aged about 42 years, w/o Shri Suresh chand, R/o H.No. 61 GF & FF, Pocket-6, Sector-21, Rohini, Delhi-110086.

17. Sonia Rani, TGT, Group 'B',
Employee ID-20040293, Aged about 43 years,
w/o Shri Brahm Dev,
R/o H.No. 275, soonaro Wali Gali,
VPO Kanjhawala, Delhi-110081.
18. Lal Singh, TGT, Group 'B',
Employee ID-20040342, Aged about 50 years,
s/o Shri Tejpal Singh,
R/o flat No. 140, Pocket-B, New MIG,
Mayor Vihar Phase-III, Delhi-110096.
19. Asha Yadav, TGT, Group 'B',
Employee ID-20040279, Aged about 37 years,
w/o Shri Parveen Kumar Yadav,
r/o F-1/50, Phase-I, Budh Vihar,
Delhi-110086.
20. Aakanksha, TGT, Group 'B',
Employee ID-20060083, Aged about 37 years,
D/o Shri OP Anand,
r/o P-87, Gali No. 4, Bihari Colony,
Shahdara, Delhi-110032.
21. Madhu Verma, TGT, Group 'B',
Employee ID-20040294, Aged about 41 years,
w/o Shri Rakesh Verma,
R/o H.No. 49, Pocket-5, Sector-22, Rohini,
Delhi-110086.
22. Pinky Yadav, TGT, Group 'B',
Employee ID-20040250, Aged about 45 years,
W/o Shri Sudhir Sirohi,
R/o H. No. D-1/161 Nehru Vihar,
Munshi Ram Gali, Karawal Nagar Road,
Delhi.
23. Reena, TGT, Group 'B',
Employee ID-20040281, Aged about 47 years,
w/o Shri Vijendra Singh,
R/o J-10, Parvana Vihar Apartments,
Sector-9, Rohini-110085.
24. Sunita Dabas, TGT, Group 'B',
Employee ID-20040316, Aged about 47 years,
W/o Shri Vijay Kumar,
R/o H.No. 235, VPO-Ranikhera,
Delhi-110081.

25. Narendra Kumar Yadav, TGT, Group 'B', Employee ID-20040237, Aged about 43 years, s/o Shri Ramayan Yadav, R/o N-180, Gali No. 08, Sadatpur Extn, Delhi-110090.
26. Ravinder Kaur, TGT, Group 'B', Employee ID-20040262, Aged about 48 years, w/o Shri Pushpender singh, R/o H. No. 367, VPO-Ranikhera, Delhi-110081.
27. Sunita Shokeen, TGT, Group 'B', Employee ID-20040291, Aged about 46 years, W/o Shri Ajay Kumar Shokeen, R/o H. No. B-3/30, 31, Pocket-B, Sector-11, Rohini, New Delhi-110085.
28. Sunita Kumari, TGT, Group 'B', Employee ID-20040331, Aged about 49 years, W/o Shri Naresh Kumar, R/o Flat No. 151, Pocket-7, Sector-12, Dwarka, New Delhi-110078.
29. Rajesh Kumar Sharma, PGT, Group 'B', Employee ID-20040317, Aged about 40 years, s/o Shri Babu Lal Sharma, R/o 1410, Gali No. 52/E, Molarband Extn., Badarpur, New Delhi-110044.
30. Munijan Sharma, TGT, Group 'B', Employee ID-20040352, Aged about 45 years, S/o Sh. Madan Lal Sharma, A-1/381, Gali No. 2, Madhu Vihar, New Delhi-110059.
31. Ashok Kumar, Section Officer, Group 'B', Employee ID-20083653, Aged about 40 years, s/o Sh. Dhanpat Singh, R/o HN-217, VPO Surehera, New Delhi-110043.
32. Jitender Singh, TGT, Group 'B', Employee ID-20040310, Aged about 46 years, S/o Sh. Jaikaran, R/o H. No. 1467, Gali No. 1, Mahavirpura, Gurgaon, Haryana-122001.

33. Deepa, PGT, Group 'B',
 Employee ID-20170723, Aged about 37 years,
 w/o Sh. Parveen Dalal,
 R/o H.No. D-10, Shanti Kunj,
 D-3 Block, Vasant Kunj,
 New Delhi. ...Applicants

(through Sh. M.K. Bharadwaj)

Versus

Govt. of NCT of Delhi & Ors. through

1. The Chief Secretary,
 Govt. of NCT of Delhi,
 Delhi Secretariat,
 IP Estate, New Delhi.
2. The Principal Secretary (Services),
 Govt. of NCT of Delhi,
 Delhi Secretariat, IP Estate, New Delhi.
3. Directorate of Education,
 Through its Director,
 Govt. of NCT of Delhi, Old Secretariat, Delhi.
4. The Chairman (DSSSB),
 FC-18, Institutional Area,
 Karkardooma, Delhi. ...Respondents

ORDER (ORAL)

MA No. 1147/2018

MA No. 1147/2018 filed for joining together and MA No. 1148/2018 filed for exemption from filing legible copies/fair typed copy of illegible, dim Annexures/Hindi translated document are allowed.

OA No. 1022/2018

2. The applicants have filed this Original Application seeking direction to the respondents to regulate their pension under Old Pension Scheme governed under CCS (Pension) Rules, 1972 and not the one which was made effective on 01.01.2004 and fix their pension at par with

their batch-mates and juniors with all consequential benefits.

3. Brief facts of the case are that the applicants, against the advertisement issued by Delhi Subordinate Services Selection Board [hereinafter referred to as DSSSB]/respondent no.4 in the year 2002 for selection of various posts i.e. LDCs, Stenographers, Assistant Teachers and TGT, being eligible applied for the posts of Assistant Teacher [Post Code 014C/2002] and TGT [Post code 012B/2002] and after scrutiny, they were allowed to appear in written examination held in the year 2002 & 2003. The result of the above examination was declared in part in 2003. It is the contention of the applicants that the respondent no.4 informed that the result for the remaining candidates would be declared later without disclosing the reason but assured that the delay in declaration of result will not, in any manner, affect their service career. Finally, the result of the applicants was declared in piecemeal i.e. in September, October, 2003 and January, 2004 and even on later dates in continuation of earlier result notice dated 11.01.2003. The applicants further submit that after declaration of the result, their dossiers were forwarded to the concerned departments for appointment. Meanwhile, Hon'ble High Court of Delhi in case of **Dr. B.R. Ambedkar**

Memorial Foundation (Regd.) & Anr. Vs. Union of India

& Ors. [CWP No.6456/2003 and CM No.11283/2003]

stayed the appointment to the quota of Scheduled Tribes till further orders. This fact was brought to the notice of the Chairman, DSSSB vide letter dated 31.10.2003. The Hon'ble Supreme Court also in the case of **S. Pushpa & Ors vs. Sivachanmugavelu & Ors.**, allowed grant of reservation to SCs/STs in jobs under GNCTD. The said judgment was also conveyed to the Chairman, DSSSB vide letter dated 30.06.2005. The applicants were offered appointment in terms of the above judgments as TGT & Assistant Teacher during May 2004 to July 2007 but they were not granted appointment benefit since 2003. Subsequently, New Pension Scheme was framed for those employees who entered service on or after 01.01.2004, by the Govt. of India, Ministry of Finance. The respondents, accordingly, gave the benefit of Old Pension Scheme to those candidates whose results were declared earlier and who had joined prior to 01.01.2004 excluding the applicants. Thus, the applicants are getting lesser salary than their juniors. Aggrieved of the said action, the applicants whose appointments were delayed to various pending court cases, made representations to the respondents for grant of benefits of Old Pension Scheme.

When the representations of the applicants did not yield any favourable result, some of the identically placed candidates filed OA No. 183/2009, OA No.3719/2009 and OA No. 2045/2010 before this Tribunal which were allowed directing the respondents to fix the seniority of the applicants with effect from the date of appointment of their batch-mates including the benefits of pay fixation and Old Pension Scheme. These directions were implemented by the respondents in respect of the applicants therein but the present applicants are not being given the benefits in spite of submitting the representations which are still pending with the respondents.

4. The sole prayer in this OA is for grant of pension under old pension scheme. It is contended that a similar matter has been decided by a Coordinate Bench of this Tribunal in the case of ***Yogesh Kumar & Ors. vs. MCD & Ors.***[OA No.2045/2010 decided on 16.11.2011] and in terms thereof, similar relief may also be granted to the applicants in this OA as well.

5. Before accepting the submission of the applicants that the instant case is covered by the decision of this Tribunal in ***Yogesh Kumar & Ors. vs. MCD & Ors.***(supra), it is necessary to deal with the facts of the case.

6. Having gone through the decision of the Tribunal in OA No.2045/2010, relied upon by the applicants, I find that the applicants therein had applied for various posts such as LDCs, Stenographers and Assistant Teachers etc. in terms of the advertisement issued by the respondents in 2000. Combined preliminary examination was held on 25.02.2001 and 04.03.2001 and main examination was held on 11.08.2002. The result of the main examination was declared on 17.09.2002. However, the result of reserved category candidates was not declared on account of pendency of Writ Petition in the case of ***Kanwar Pal & Ors. vs. Govt. of NCT and Ors.*** Consequent upon decision of the High Court, result of reserved category candidates was declared on 04.12.2003 but the process with regard to general category candidates was not stopped and their typing test was conducted in September and November, 2003. Thereafter all were given joining in April/May, 2003 by completing all formalities. However, the typing test of reserved category candidates was conducted on 27/28.12.2003 and by that time the final result of general category had been declared. Thereafter, the respondents filed one LPA against the decision of High Court in case of ***Kanwar Pal Singh*** (supra) because of which joining of the applicants (reserved category candidates) was delayed

without any fault on their part and they were subjected to discrimination. However, the respondents assured the applicants giving them benefit as were given to general category candidates of their batch. The Coordinate Bench of this Tribunal in the case of **Yogesh Kumar & Ors. vs. MCD & Ors.** (supra), while granting the relief, observed as under:-

“3. It is not in dispute that all who were party to the Writ Petition and even those who were party to the High Court, have been given seniority and their pay fixed notionally. The only relief asked for in the present O.A. is that the applicants should be governed by the Old Pension Scheme which is of 1972 and not the one which came into effect later on 1.1.2004. This precise relief has already been granted to all who were parties in the Writ Petition before the High Court and even three applicants in the very present O.A., i.e. applicants no.1, 2 and 8 as well. Once relief has been given to some of the very applicants in the present O.A. as mentioned above, there is no reason why it should not be granted to other applicants as well.”

7. The crucial issue here is whether the applicants were part of the same selection process out of which some other candidates got appointed prior to the applicants and were given the benefit of Old Pension Scheme while these applicants underwent the same selection process but considerably delayed. Further, more importantly, was the delay on account of any fault on their part. The records reveal that the delay in selection process has not taken place on account of any action or lack of the same on part of the applicants. It has been delayed because of

administrative reasons and also court orders. Therefore, the applicants cannot be made to suffer for no fault of theirs. This is also the spirit of the order passed by coordinate Bench of this Tribunal in ***Yogesh Kumar & Ors. vs. MCD & Ors.*** (supra).

8. In view of the above observations, I have no hesitation in accepting the submission of the learned counsel for the applicants that the instant OA is covered by the decision of the coordinate Bench of this Tribunal in ***Yogesh Kumar & Ors. vs. MCD & Ors.*** (supra) and the instant OA deserves to be allowed in the same terms at the admission stage itself. Ordered accordingly. It is made clear that if other candidates who were part of the same selection process of 2002 and were able to join the job prior to 01.01.2004 and were given the benefit of Old Pension Scheme, the applicants shall also be governed by the Old Pension Scheme, subject to no other legal impediments. No costs.

(Uday Kumar Varma)
Member (A)

/ns/