

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

OA-2945/2015

Reserved on : 08.04.2016.

Pronounced on : 18.04.2016.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Sh. Narayana Rao Battu,
52 years
S/o Giraiah,
Joint Secretary & Legislative Counsel,
W-31, Type-IV Special HUDCO Place,
New Delhi-110049.

..... Applicant

(through Sh. Rabin Majumder, Advocate)

Versus

1. Union of India through
Secretary,
Legislative Department,
Ministry of Law and Justice,
Government of India,
Shastri Bhawan,
New Delhi.

2. The Deputy Secretary
To the Government of India,
Ministry of Law and Justice,
Legislative Department,
Shastri Bhawan,
New Delhi.

3. The Director (PW),
Department of Pension and Pensioners' Welfare
Ministry of Personnel, Public Grievances and Pension,
3rd Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.

4. Union Public Service Commission
Through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi. Respondents

(through Sh. Rajesh Katyal, Advocate)

O R D E R

The applicant responded to an advertisement issued by UPSC in Employment News dated 26th April – 2nd May, 2003 regarding recruitment to the

post of Deputy Legislative Counsel in the Department of Justice and Company Affairs. The UPSC conducted interviews for the aforesaid posts in the year 2003 itself. The applicant was not initially selected and was kept in the reserved list. One Sh. Ashok Gulabrao Pawade, who was selected, resigned on 09.11.2004. Respondent No.1 then vide his letter dated 16.11.2004 requested UPSC – Respondent No. 4 to provide a substitute from the reserved list. The UPSC vide their letter dated 26.12.2004 recommended the applicant for the said post. He received offer letter of joining from the Legislative Department on 05.01.2005 asking him to join by 25.01.2005. His grievance is that vide impugned letter dated 02.03.2015 the respondents have denied to him the benefit of old pension scheme as he had joined after 01.01.2004. He has, therefore, approached this Tribunal seeking the following relief:-

- “(I) Declare the impugned action of the Respondent No. 2 & 3 for not considering the services of the Original Applicant to be included under the CCS (Pension) Rule, 1972 is unconstitutional and illegal.
- (II) Declare the impugned action of the Respondent No. 2 & 3 is patently illegal, arbitrary and discriminatory for not considering Original Applicant's deemed date of appointment either from the date of occurrence of vacancy of the post i.e. 20.11.2002 or from the date of recommendation of UPSC i.e. 07.10.2003 or from the deemed date of appointment of his junior Shri R.K. Pattanayak i.e. 16.9.2003.
- (III) Declare and hold that impugned action of the Respondent is violative of Articles 14 and 16 of the Constitution.
- (IV) Direct the Respondents to fix the services of the Original Applicant under the CCS (Pension) Rules, 1972 considering/granting thereby the deemed date of appointment to the Original Applicant with all consequential benefits either from the date of occurrence of vacancy of the post i.e. 20.11.2002 or from the date of recommendation of UPSC i.e. 07.10.2003 or from the deemed date of appointment of his junior Shri Pattanayak i.e. 16.9.2003, with all consequential benefits including pay fixation and pensionary benefits as per the CCS (Pension) Rules, 1972.
- (V) Quash the impugned Orders dated 02.3.2015 and 13.3.2015 declaring to the effect that the same is/are illegal, arbitrary and also being inapplicable to the facts of the case the Original Applicant.

- (VI) Declare that the Original Applicant is entitled for his pro forma appointment date to be fixed as prior to 01.01.2004 and consequently be covered by the CCS (Pension) Rules, 1972 with all the consequential benefits.
- (VII) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the Original Applicant with the costs of litigation."

2. Basic facts of the case have not been disputed by the respondents, who have also submitted that the applicant joined as Deputy Legislative Counsel due to the resignation of one Sh. Ashok Gulabrao Pawade, who had earlier been selected for the aforesaid post but had resigned within three months from the date of appointment on 09.11.2004. Since the applicant had joined after 01.01.2004, he was placed in the new pension scheme, which came into effect from 01.01.2004. The respondents have further submitted that even Sh. Ashok Gulabrao Pawade was placed in the new pension scheme.

3. I have heard both sides and have perused the material on record. The applicant has submitted that even his junior Sh. R.K. Pattanayak has been given the benefit of old pension scheme even though the same has been denied to him. The respondents have, however, denied that the case of applicant was similar to that of Sh. R.K. Pattanayak as Sh. Pattanayak could not join earlier due to pendency of court cases. He could finally join after the judgment of Hon'ble High Court in Writ Petition No. 6829/2013 dated 12.01.2006. Thus, while Sh. Pattanayak was prevented from joining service due to pending court cases, such was not the case with the applicant.

3.1 The applicant has relied on the judgment of Hon'ble Supreme Court in the case of **UOI Vs. N.R. Parmar**, (2012) 13 SCC 340. He has also relied on the judgment of Hon'ble High Court of Delhi in Writ Petition (C) No. 7741/2013 as well as the judgment of this Tribunal in OA No. 3594/2011 (**Sh. Narayana Rao**

Battu Vs. UOI & Ors.) dated 11.10.2013. However, in my opinion, all these three judgments pertain to fixation of seniority and do not have any relevance in so far as granting the benefit of old pension scheme is concerned.

3.2 The respondents, on the other hand, relied on the judgment of Hon'ble High Court of Delhi in W.P.(C) No. 2520/2012 (**Shailender Kumar & Ors. Vs. Delhi High Court**) dated 03.05.2012 in which the petitioners were denied benefit of new pension scheme as they had joined service after 31.12.2003 and their late joining was not attributable to any negligence or lapse on the part of the respondents. Hon'ble High Court had also observed that no court order either had restrained the respondents from joining. To this extent, this case was distinguishable from the judgment in case of Government of NCT of Delhi & Anr. Vs. Dr. Pawan Kumar N. Mali & Ors. (WP(C) No. 5983/2010) dated 03.02.2011 in which relief was granted to the petitioners primarily applying the principle that the order of the court cannot prejudice any one. The respondents argued that as far as the present case was concerned the vacancy against which the applicant was appointed arose after 01.01.2004 when Sh. Ashok Gulabrao Pawade had resigned. The applicant's late joining was not due to either any court order or on account of any lapse on the part of the respondents. Hence, he cannot be given benefit of the old pension scheme as has been laid down by Hon'ble High Court in **Shailender Kumar's** (supra) case.

3.3 Learned counsel for the applicant, however, drew my attention to the advertisement issued by UPSC, which is available at page-41 of the paper-book. While calling for applications for the post of Deputy Legislative Counsel, UPSC had advertised that benefit of added years of service as admissible under Rule 30 of CCS (Pension) Rules, 1972 was applicable to the post, thereby, making it clear that those appointed in pursuant to this advertisement, would be entitled

to the benefits of CCS (Pension) Rules, 1972, which govern the old pension scheme. Learned counsel for the applicant also drew my attention of DoP&T O.M. dated 13.06.2000 wherein it is provided that when a selection has been made through UPSC and a request for nomination from the reserved list is made in the event of occurrence of vacancy by non-joining of a candidate or by resignation of a candidate, who had joined in pursuance to the said selection but had resigned within a period of one year from the date of joining, such a vacancy should not be treated as a fresh vacancy.

4. I have considered the aforesaid submission and I find considerable merit in the same. In the advertisement UPSC had made it clear that the selectees would be entitled to the benefit of old pension scheme. It is an admitted position that the applicant has been selected in pursuance to the same advertisement. Therefore, denying the benefit of old pension scheme to him would amount to changing the rules of the game in the midst of selection process and cannot be permitted. I draw support in this regard from various judgments relied upon by the applicant, such as, **Himani Malhotra Vs. High Court of Delhi**, AIR 2008 SC 2013 in which it was held that it was not permissible for the employer to change the rules of the selection process midway. Reliance can also be placed on the following judgments:-

- (i) **Tamil Nadu Computer Science Bed Graduate Teachers Welfare Society Vs. Higher Secondary School Computer Teachers Association & Ors.**, (2009) 14 SCC 517.
- (ii) **State of Bihar & Ors. Vs. Mithilesh Kumar**, (2010) 13 SCC 467.
- (iii) **Arunachal Pradesh Public Service Commission & Anr. Vs. Tage Habund & Ors.**, AIR 2013 SC 1601.
- (iv) **P. Mohanan Pillai Vs. State of Kerala & Ors.**, AIR 2007 SC 2840.
- (v) **K. Manju Sree Vs. State of A.P.**, AIR (2008) SC 1470.

- (vi) **Civil Appeal No. 4255-4258/2014** (Bishnu Biswas & Ors. Vs. UOI & Ors.) decided on 02.04.2014.
- (vii) Ernakulam Bench of CAT judgment dated 21.02.2013 in OA-560/2012 (V.M. Joseph Vs. UOI & Ors.).
- (viii) Ernakulam Bench of CAT judgment dated 28.06.2013 in OA-724/2012 (P. Rajesh Kumar & Ors. Vs. UOI & Ors.).

5. I, therefore, allow this O.A. and set aside the impugned orders dated 02.03.2015 and 13.03.2015. I further direct that the applicant shall be granted the benefit of CCS (Pension) Rules, 1972 from the date of his appointment as Deputy Legislative Counsel. This benefit shall be extended to him within a period of eight weeks from the date of receipt of a certified copy of this order. No costs.

**(Shekhar Agarwal)
Member (A)**

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