

**Central Administrative Tribunal
Principal Bench**

OA No. 1252/2017
MA No.4805/2018

Order reserved on: 26.11.2018
Order pronounced on : 04.12.2018

Hon'ble Mr. Pradeep Kumar, Member (A)

G.M.Sampath Kumar
Age 58 years, Group-II,
Junior Technical Officer-I (Air Frame)
Engineering Section,
ARC Air Wing, Palam,
New Delhi-110037

R/o Block No.82, Qtr. No.'L'
CPWD Colony CGHC,
Vasant Vihar,
New Delhi-110057.

... Applicant

(By Advocate: Sh. Binay Kumar Das with Sh. Ranjit Sharma)

Versus

Director,
Aviation Research Centre,
Director General of Security,
Cabinet Secretariat,
East Block-V,
R.K.Puram,
New Delhi-110066.

... Respondent

(By Advocate: Sh. Rajnish Prasad)

ORDER

The applicant had served Indian Air Force as a Sergeant and on completion of requisite service he was discharged in August 1998. Thereafter he applied for absorption under Aviation Research Centre, Directorate General of Security (Cabinet Secretariat) against vacancies notified in October 1998. The interview was conducted in September 1999 and offer of appointment was issued on 07.07.2004. Thereafter, he underwent the medical examination and joined on 06.08.2004.

The applicant pleads that delay in joining has taken place on account of departmental procedures for which he is not responsible and as such he is required to be covered under the Old Pension Scheme as was applicable to those who joined service by 31.12.2003. He had made a representation to this effect on 07.12.2016 which was rejected vide orders dated 19.01.2017. The same has been challenged in this OA.

The applicant further pleaded that in similar circumstances, one OA was allowed by the Ernakulam Bench of this Tribunal vide their orders on 15.02.2016 titled **Sheeba**

B. and another vs. Union of India and others, (OA No.180/00020/2015).

2. The applicant also pleads that subsequent to his appointment, the same organisation had also invited application in July 2003 against which the offer of appointments were issued within a short duration in May 2004 only. Whereas in the case of applicant, there has been undue delay which has put the applicant to a disadvantage, which is being agitated in the instant OA.

The applicant also drew attention to a decision by Hon'ble High Court of Delhi titled **Inspector Rajendra Singh & ors. vs. UOI & ors.**, which was decided on 27.03.2017 [WP (C) No.2810/2016]. In this case the process of selection including medical examination was completed prior to December 2003 whereas the applicant could join only later and Hon'ble High Court allowed to treat the petitioners under Old Pension Scheme under the Central Civil Services (Pension) Rules, 1972. That decision was challenged in the Hon'ble Supreme Court where the SLP was dismissed on 08.01.2018. Thereafter, the order was implemented in May 2018. The applicant seeks similar relief in the instant case.

3. Heard Sh. Binay Kumar Das, learned counsel for applicant and Sh. Rajnish Prasad, learned counsel for respondents.

4. The respondents pleaded that Aviation Research Centre is an organisation relating to gathering of intelligence and as such lot of background checks are required to be done. It is only thereafter, that someone can be offered the appointment on account of security reasons, as such, sometimes delay takes place. However, they drew attention to para 9 of the offer of appointment dated 07.07.2004 which reads as under:

“9. He should exercise option as laid down in Rule 19(1) of CCS (Pension) Rules, 1972 within a period of one year from the date of his re-employment, if he desires to take advantage of the retirement benefits based on combined military and civil service (if applicable).”

It is, therefore, clear that had applicant exercised his option he would still have been considered for Old Pension Scheme despite his appointment having taken place in August 2004. In the event, the applicant did not exercise the option. Further, he chose to make a representation much later on 07.12.2016. Thus, the application is time barred also.

5. The respondents also pleaded that all this while, from August 2004 till date, the contributions are being made to the

New Pension Scheme and, as such, this settled position cannot be disturbed.

6. The respondents also drew attention to a case decided by the Hon'ble Supreme Court in **Naresh Kumar vs. Department of Atomic Energy**, (2010) 7 SCC 525 decided on 08.07.2010. In this case the appellant was serving in the Indian Air Force and after putting in 15 years of service, he received military pension and thereafter he joined Narora Atomic Power Station on 17.04.1978 (which is under Department of Atomic Energy) and he had a choice to avail pensionary benefits from the Air Force or in the alternative not to take pension from the Air Force but to have the benefit of combined qualifying service for his military and civil services from the Union of India. However, the appellant exercised his option to receive benefits from the Air force and did not opt for combined benefits of civil and military pension.

Subsequently, the Government incorporated Nuclear Power Corporation of India Limited (NCIL) on 03.09.1987 and some of the employees of Department of Atomic Energy were transferred en masse on deputation to the new Corporation. The applicant joined the new corporate on 01.01.1998 after resigning DAE on 31.12.1997. The employees so deputed to this new Corporation, were given the opportunity for changing

their options in respect of pension. Last date was 16.02.1998. The appellant exercised this option on 13.02.1998, for drawing pro-rata monthly pension and family pension benefits from the date of absorption. Thereafter, vide his letter dated 14.01.1999, the appellant wanted to change his option from prorata pension to pension for combined service put in both DAE and NPCIL. The same was not agreed by the department.

The matter came to be challenged firstly before the Tribunal, thereafter before the Hon'ble High Court and thereafter before the Hon'ble Apex Court. The Apex Court had observed that request of the appellant was declined in the year 1999 and thereafter he did not agitate against the same until 2007 and thus on account of delay it was held that appellant is not entitled for any such benefit. Accordingly, the appeal was dismissed.

Thus, the principle of limitation was upheld by the Hon'ble Apex Court. Respondents pleaded that this ratio is applicable in instant case also as there had been considerable delay when applicant made representation.

7. Another case relied upon by the respondents is titled **Sudhir Kumar Consul vs. Allahabad Bank**, (2011) 3 SCC 486 which was decided on 21.02.2011. This also upheld

limitation. The respondents pleaded that the present application is barred by limitation and the applicant had not opted for the benefit which he is claiming now.

8. Matter was heard at length. It is admitted that the process of selection was initiated in the year 1998 and it got culminated in August 2004 when the applicant had joined the Aviation Research Centre. However, as brought out vide para 4 above, he was still given the option of availing the benefits under CCS (Pension) Rules, 1972. The same was not exercised by the applicant and it was only belatedly in 2016 only that he had represented to be covered under these rules, which was rejected.

9. It is, therefore, clear that the present application is barred by limitation and thus is not maintainable. Moreover, in the instant case, despite delay in the appointment process, the applicant still had the option which he did not exercise and by this act, the opportunity to avail the benefits which are claimed in the instant application, was consciously foregone.

It is also not the case of applicant that somebody whose process of recruitment started along with him has joined earlier and thus is having the same benefit and as such he is being discriminated. There is no such whisper anywhere.

Therefore, this Tribunal is of the view that the applicant cannot be covered under the Old Pension Scheme under CCS (Pension) Rules, 1972. He will be covered under the Pension Rules as were prevalent in August 2004 when he joined the Aviation Research Centre.

10. The present OA, therefore, does not succeed and the same is dismissed being devoid of merit. Since OA is decided, MA No.4805/2018, which was for early hearing, has become infructuous. Hence, this MA is also dismissed. There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

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