

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

OA-2616/2017

Reserved on: 22.10.2018.

Pronounced on : 02.11.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)

Sh. Amit Kumar Gupta, 40 years
Technician Grade-III, (C),
S/o Sh. Ram Kishan Gupta,
R/o G-206, Patel Nagar-III,
Ghaziabad, UP. **Applicant**

(through Sh. M.K. Bhardwaj, Advocate)

Versus

1. Govt. of NCT of Delhi through
Its Chief Secretary,
Govt. of NCT of Delhi,
I.P. Estate, New Delhi.
2. The Principal Secretary,
Health & Family Welfare Department,
Govt. of NCT of Delhi, Delhi Secretariat,
New Delhi.
3. The Medical Superintendent,
Jag Parvesh Chandra Hospital,
Govt. of NCT of Delhi,
Shastri Park, Delhi. **Respondents**

(through Sh. Vijay Pandita, Advocate)

O R D E R

Brief facts of the current O.A. are that the applicant applied for

Post Code-12/02 in response to an advertisement issued by the respondents for appointment against various posts including Technician Group-III/ECG Technician Grade-III in the year 2002. Being found eligible, the applicant was issued admit card along with other candidates for Post Code-12/02 to appear in the written test scheduled for 29.09.2002, result of which was declared in November, 2002. The applicant was declared qualified along with other candidates for appointment to the aforesaid posts of Technician Group-III. The respondents issued offers of appointment to all the selected candidates, however, the applicant was not given offer of appointment. When the applicant approached the respondents, he was informed that his appointment was being delayed on account of some interim order passed in OA-2543/2002 (Paras Nath & Ors. Vs. GNCTD).

2. Since similarly situated persons selected along with him were given offer of appointment, the applicant requested the respondents to issue an offer of appointment to him also. The respondent No.2 realizing his mistake sent letter dated 12.11.2003 to respondent No.3 to issue appointment letter to the applicant immediately. Accordingly, the Respondent No.3 issued the appointment letter dated 24.12.2003 to the applicant stating that the applicant's terms and conditions shall be governed as per prevailing rules as on December, 2003. On receipt of the said letter,

the applicant joined on 27.12.2003. He was sent for medical examination vide letter dated 31.12.2003 but medical report was sent on 10.01.2004. Hence, the applicant was treated as having joined w.e.f. 22.01.2004. The applicant joined pursuant to aforesaid offer of appointment without any delay and requested the respondents to treat him at par with other selected persons. The applicant avers that in case of other selected persons including Deepak Bhaskar, the respondents started issuing offers of appointment in October, 2003 and even their joining was given in October, 2003. Similarly selected persons were subjected to medical examination in November, 2002 and given joining in 2003 itself. Due to this discrimination, the applicant's pay remained lesser than his batchmates.

3. The applicant avers that the procedural delay for which he is not responsible in joining has to be ignored. The Old Pension Scheme was replaced by New Pension Scheme w.e.f. 01.01.2004. Vide order dated 19.07.2006, the New Pension Scheme dated 22.12.2003 was framed by the Govt. of India, Ministry of Finance and made applicable to the employees of GNCT of Delhi retrospectively for those who entered the service on or after 01.01.2004. The employees who joined on or after 01.01.2004 were not allowed to be governed by Old Pension Scheme under CCS (Pension) Rules, 1972. All other similarly placed persons (Deepak Bhaskar etc.) were/have

been given benefit of Old Pension Scheme but the applicant was brought under the New Pension Scheme arbitrarily. All identically placed persons selected along with applicant in 2002 and who gave joining in 2005 have been given the benefits of Old Pension Scheme and pay fixation at par with their batchmates, hence the applicant and other similarly placed persons cannot be discriminated. These persons filed OA Nos. 1205/2012, 1795/2011, 3472/2013 and 3536/2013, which were allowed with directions to the respondents to fix their pay w.e.f. the dates of their batchmates and to be given benefit of the Old Pension Scheme. As the applicant was not a party in those cases, he was not extended similar benefit, despite his representation dated 15.12.2015.

4. Aggrieved, the applicant has filed the current O.A. seeking the following reliefs:-

- “(a) To declare the action of respondents in denying the benefits of Old Pension Scheme and pay fixation at par with his batchmates as illegal and issue directions for regulating the Pension of applicant under Old Pension Scheme governed under CCS (Pension) Rules 1972 and fixing his pay at par with his batchmates appointed pursuant to the same advertisement issued in 2002.
- (b) To direct the respondents to regular the pension of applicant under Old Pension Scheme and not under New Pension Scheme implemented from 01.01.2004.
- (c) To direct the respondents to extend the benefits of order in OAs No. 1795/2011 and another OA in case of Yogesh Kumar & Ors. Vs. MCD & Ors. in OA No. 3719/2009 and other connected cases.
- (d) To allow the OA with cost.”

5. The applicant avers that the respondents have acted in violation of decision of Hon'ble Supreme Court in the cases of **Inder Pal Yadav Vs. UOI & Ors.**, 1985(2)SLR 248 and **K.C. Sharma Vs. UOI**, 1997(3)R.S.J. page 606 laying down that the Government as a model employer should extend the benefit of a judgment rendered in the case of similarly situated persons before forcing each and every employee to approach the Court of law. Not responding to the representation submitted by the applicant, the respondents' action is highly illegal, arbitrary and amounts to contempt of Court. The Hon'ble High Court of Delhi, while dealing with a similar case has viewed that in not following the judgment upheld by the Hon'ble Supreme Court uniformly and in compelling the individual persons to approach the Court repeatedly seeking the same relief, the respondents have committed contempt. The relevant portion of the said judgment is reproduced below:-

"Learned ASG appearing in Court today also assures us that he will pass on the necessary message to the concerned ministries so that there is no unnecessary litigation and burden on the Court arising from persons filing petitions where a similar issue has been finally settled by the Competent Court."

6. The respondents in their counter affidavit have submitted that the current O.A. is liable to be dismissed on the grounds of delay and latches as the delay/cause of action arose to the applicant w.e.f. 2004 but he filed the OA as late as 27.07.2017. In support, they have relied on the following judgments:-

(i) Hon'ble Supreme Court in the case of **Sulochana**

Chandrakant Galande Vs. Pune Municipal Transport, (2010) 8 SCC

467 has held as follows:-

"30. If some person has taken a relief from the Court by filing a Writ Petition immediately after the cause of action had arisen, petitioners cannot take the benefit thereof resorting to legal proceedings belatedly. They cannot take any benefit thereof at such a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person. In State of Karnataka & Ors. Vs. S.M. Kotrayya & Ors., (1996) 6 SCC 267, this Court rejected the contention that a petition should be considered ignoring the delay and laches, on the ground that the petitioner therein filed the petition just after coming to know of the relief granted by the Court in a similar case, as the same cannot furnish a proper explanation for delay and laches. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches."

(ii) Hon'ble Supreme Court in the case of **Jagdish Lal Vs. State of**

Haryana, decided on 07.05.1997 wherein the following has been

observed:-

"18....Suffice it to state that the appellant kept sleeping over their rights for long and elected to wake up when they had the impetus from Vir Pal Chauhan and Ajit Singh's ratios. But Vir Pal Chauhan and Sabharwal's cases, kept at rest the promotion already made by that date, and declared them as valid; they were limited to the question of future promotions given by applying the rule of reservation, to all the persons prior to the dated of judgment in Sabharwal's case, which required to examined in the light of law laid in Sabharwal's case. Thus earlier promotions cannot be reopened? Only those cases arising after that date would be examined in the light of the law laid down in Sabharwal's case Vir Pal Chauhan's case and equally Ajit Singh's case. If the candidate has already been further promoted to the higher echelons of service, his seniority is not open to be reviewed. In A.B.S. Karamchari Sangh's case, Bench of two Judge to which two of us, K. Ramaswamy and G.B. Pattanik, JJ. were members, had reiterated the above view and it was also held that all the prior promotions are not open judicial review. In Chander Pal & Ors. V State of Haryana [W.P. (C) Nos. 4715-18/93 dated December 4, 1996] a Bench of two judges consisting of S.C. Agrawal and G.T. Nanavati, JJ. considered the effect of Vir Pal Chauhan's, Ajit Singh, Sabharwal and A.B.S Karmachari Sangh's cases and held that the seniority of those respondents who had already retired or promoted to higher posts

could not be disturbed. The seniority of the petitioner therein and the respondent who were holding the post in the same level or in the same cadre would be adjusted keeping in view the ratio in Vir Pal Chauhan and Ajit Singh's cases; but promotion, if any, had been given to any of them during the pendency of this writ petition, was directed not to be disturbed. Therein, the candidates appointed on the basis of economic backwardness, social status or occupation etc. were eligible for appointment against the post reserved for backward classes if their income did not exceed Rs. 18,000/- per annum and they were given accelerated promotion on the basis of reservation. In that backdrop, the above directions came to be issued. In fact, it did not touch upon [Article 16\(4\)](#) or 16(4-A). Therefore, desperate attempts of the appellants to re-do the seniority had by them in various cadres/grades though in the same services according to 1974 Rules or 1980 Rule, are not amenable to judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well."

(iii) Hon'ble Supreme Court in the case of **Rup Diamonds Vs. UOI** has observed as under:-

"8....there is one more ground which basically sets the present case apart. Petitioners are reagitating claims which they had not pursued for several years. Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided."

7. Respondents have also cited following judgments to strengthen their objection, namely:-

- (iv) **State of Orissa Vs. Mamta Mohanty**, (2011) 3 SCC 436.
- (v) **Govt. of West Bengal Vs. Tarun K. Roy**, (2004) 1 SCC 347.
- (vi) **State of MP Vs. Yogendra Srivastava**, (2010) 12 SCC 538.
- (vii) **Vijendra Singh Shokeen Vs. GNCTD** (TA-81/2013) decided on 12.03.2014.
- (viii) **State of Karnataka & Ors. Vs. S.M. Katrayya & Ors.**, (1996) 6 SCC 267.
- (ix) **State of Bihar Vs. Kameshwar Prasad Singh & Ors.**, 2000 SCC(L&S) 845.
- (x) **S.S. Rathore Vs. UOI & Ors.**, AIR 1990 SC 10.

- (xi) **UOI Vs. M.K. Sarkar**, (2010) 2 SCC 59.
- (xii) **DCS Negi Vs. UOI & Ors.**
- (xiii) **State of Punjab Vs. Gurdev Singh**, (1991) 4 SCC 1.
- (xiv) **UOI Vs. Ratan Chandra Samanta**, JT 1993(3) SC 418.
- (xv) **Harish Upptal Vs. UOI**, JT 1994 (3) 126.
- (xvi) **Ajay Walia Vs. State of Haryana & Ors.**, JT 1997(6) SC 592.

8. The respondents submit that in pursuance to the directions of this Tribunal in OA-2543/2002, the dossier of the applicant was forwarded to GTB Hospital vide letter dated 12.11.2003 with a direction to issue appointment letter to the candidates within 10 days of receipt of the letter. However, since the applicant joined the hospital only on 22.01.2004, i.e. after 01.01.2004, when the Old Pension Scheme had ceased to exist, he is not entitled for benefits under Old Pension Scheme, as per rules.

9. The applicant in the O.A. is an appointee of advertisement process initiated in the year 2002 for Technicians Group-III/ECG Technician-III for the Post Code-12/02. He successfully qualified the exam along with others. The offer of appointment for others was issued but in his case it got delayed due to some interim orders in OA-2543/2002, where he was not even a party. The respondents, on realizing their mistake issued him the appointment letter on 12.11.2003. The applicant submitted his joining report on 27.12.2003.

However, due to formalities of his medical examination etc. the respondents took his date of joining as 22.01.2004.

10. I have considered the rival submissions made by both sides. In view of the fact that similarly placed persons like the applicant have been given the benefits which have been denied to the applicant, the objection regarding delay is not justified. Hence, I condone the same.

10.1 The denial of parity with the juniors/batchmates and the non applicability of Old Pension Scheme has been the subject matter of proceedings before the CAT in various OAs where the applications have been allowed. Similar issue has been adjudicated in favour of the applicants by the Hon'ble High Court of Delhi in WP(C)-5983/2010 dated 03.02.2011. In Para-14 of the aforesaid judgment, the Hon'ble Single Judge has observed that:-

"14. Similarly, if the new pension scheme is applicable to new recruits from 1st January, 2004, the respondents could not be termed as new recruits as the offers of Appointment were sent to them much prior 1st January, 2004 and was also accepted by them and pursuant to which they were also asked to undergo the medical examination and they were found to be fit. The only factor is that they were not given placement in different hospitals as the doctors who were appointed on contractual basis were continuing on account of the status quo order granted in their favor by the court which was ultimately vacated."

10.2 Once the question in principle has been settled by various judicial fora, the respondents should have followed the same rationale in this case too. A perusal of sequence of events shows

that similarly placed batchmates of the applicant have been offered benefit of Old Pension Scheme. All the batchmates of the applicant form a homogeneous category which cannot be bifurcated on the basis of date of joining.

11. The case of the applicant is similar to the one decided in **OA-1795/2011** (Lalit Kumar & Ors. MCD & Ors.), as well as in case of **Yogesh Kumar & Ors. Vs. MCD** in OA-3719/2009 and other connected cases. Hence, the applicant is entitled to the benefit of Old Pension Scheme, as granted to the applicants in the aforesaid OAs. The respondents are directed to fix the pay of the applicant at par with his batchmates and regulate his pension under the Old Pension Scheme governed under the CCS (Pension) Rules,1972 and not under the New Pension Scheme made effective from 01.01.2004. His pay may be fixed at par with his batchmates pursuant to the same advertisement issued in 2002. The pension of the applicant would accordingly be regulated under Old Pension Scheme and not the New Pension Scheme implemented from 01.01.2004.

12. The O.A. is allowed. No costs.

(Praveen Mahajan)
Member (A)

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