



CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No.O.A.350/00590/2014

Date of order : 16.11.2016

Present : Hon'ble Justice Mr. V.C. Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

BISWA BHUSAN NANDI

VS.

UNION OF INDIA & ORS.
(N.S.S.O.)

For the applicant : Ms. S. Panda, counsel

For the respondents : Ms. M. Bhattacharya, counsel

ORDERPer Justice V.C. Gupta, J.M.

Heard Id. counsel for the applicant and Id. counsel for the respondents.

2. The applicant has filed this case praying for the following reliefs:-

"8(a) The respondents be ordered/directed to fix the pay scale of the applicant according to his seniority roll as he was the candidate selected in the year 1994;

(b) The respondents be ordered/directed to include the applicant in old pension scheme and also to release the arrears after fixation of pay with interest forthwith;

(c) The respondents be ordered and/or directed to produce the relevant service records of the applicant to consider his eligibility in the seniority roll and to include him in the old pension scheme;

(d) Cost of the application and

(e) Any other or further order or orders and/or direction or directions as to Their Lordships may deem fit and proper."

3. Brief facts of this case are that the applicant who was an ex-serviceman applied for the post of Data Entry Operator in pursuance of a notification issued by the Department of Personnel and Training on 12.02.1986. He qualified in the written test and also cleared the interview. But he was not granted appointment on the ground that he was not

Graduate with Mathematics or Statistics. He challenged the impugned order of not granting appointment before the Tribunal which was dismissed. Aggrieved by that order he filed a writ petition No.W.P.C.T.215 of 2005 before the Hon'ble High Court wherein the order of C.A.T. was set aside and a direction was issued to the respondents to accommodate the applicant against the post of Data Entry Operator Gr.B within three months and if the post was not available, on any other suitable post in the department. Aggrieved by the order of the Hon'ble High Court a Special Leave Petition was filed by the respondents before the Hon'ble Supreme Court which was dismissed with a cost of Rs.50000/-. Thereafter on 27.01.2009 an appointment order was issued to the applicant against the post of Data Processing Assistant Gr.III in the Data Processing Division of National Sample Survey Organisation, Kolkata in the pay band of Rs.9300-34800 with Grade Pay of Rs.4200/- after relaxing the Recruitment Rules. Since thereafter the applicant is working on the post. By filing this petition the applicant claims that he should be granted the benefit of Old Pension Scheme which was applicable for the employees who were given appointment before 2004. According to the applicant, he was entitled to be appointed in the year 1994, so, he should be given the benefit of Old Pension Scheme. He further claimed the benefit of seniority and refixation of his pay on the similar ground.

4. Reply has been filed by the respondents reiterating that the applicant is not having the requisite qualification and he was appointed in 2009, therefore, he cannot claim seniority prior to that and he is not entitled to the benefits of Old Pension Scheme. He made representation to this effect. By an order dated 28.04.2009 the benefit of Old Pension Scheme



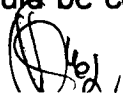
was denied on the ground that the applicant joined Government service after 01.01.2004.

5. We have considered the submissions made by Id. counsel for both sides and perused the materials available on record.


6. So far as the seniority is concerned, the seniority list of Data Processing Assistant Gr.III in Data Processing Division of National Sample Survey Organisation was circulated wherein the applicant was placed at Sl. No.282 along with his batchmates. Therefore, it is not in dispute that the appropriate seniority along with 1995 batch has been given to the applicant.

7. Grievance of the applicant is that his salary was not fixed properly. It is contended by the respondents that while fixing the seniority position of the applicant, the benefit of notional fixation has already been granted. We are of the view that as the applicant has not worked till 09.02.2009, he is not entitled to any arrears of salary. However, notional fixation has already been made. Therefore, the applicant is not entitled to relief (a) and the petition is dismissed so far as the relief claimed in Para 8(a) of the O.A. is concerned. So far as the relief claimed in Para 8(b) is concerned, it is not denied that the benefit of notional fixation of pay has been granted to the applicant with his batchmates 1995, admittedly i.e. prior to the date of commencing of New Pension Scheme from 01.01.2004.

8. In view of the above, we are of the view that the applicant is entitled to Old Pension Scheme and this O.A. is allowed to that extent. Accordingly the respondents are directed to grant the benefit of Old Pension Scheme to the applicant and make necessary deduction from his salary in accordance with law. This order should be complied with by the



respondents within a period of two months from the date of communication of this order. No costs.



(J. Das Gupta)
Administrative Member
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(Justice V.C. Gupta)
Judicial Member