

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

OA No. 2934/2017

This the 16th day of September, 2019

Hon'ble Mr. R.N. Singh, Member (J)

1. Kumar Vaibhav Gaur,
S/o Shri Ved Prakash Gaur Aged about 39 years,
Designation: Joint Secretary, UPSC, New Delhi,
R/o D-802, Amarpali Eden Park,
Plot No.F-27, Sector 50, Noida,
Uttar Pradesh-201301.

... Applicant

(By Advocate: Sh. Naresh Kaushik)

VERSUS

1. Government of India,
Through its Secretary,
Department of Defence Production,
Ministry of Defence,
130-E South Block,
New Delhi-110011.
2. Ordnance Factory Board,
Through its Director General & Chairman,
10-A, Shaheed Khudiram Bose Road,
Kolkata-700001.

...Respondents

(By Advocate: Sh. Subhash Gosain)

Reserved on : 02.08.2019.

Pronounced on : 16.09.2019.

ORDER

Hon'ble Mr. R.N. Singh, Member (J):

Heard learned counsels for both the parties.

2. The present Original Application has been filed
by the applicant under Section 19 of the Administrative

Tribunals Act, 1985. The applicant is aggrieved by an order dated 22.08.2016 (Annexure A-1) vide which the respondents have rejected the claim of the applicant for extending the benefits of old pension scheme which was in vogue till 13.12.2003, governed under CCS (Pension) Rules, 1972.

3. The undisputed facts of the case are that the Combined Engineering Services Examination, 2001 was advertised by the UPSC. The applicant applied and participated in such examination and was placed at Sl.No.58 of the merit list of successful candidates, in the Mechanical Engineering, published by UPSC on 23.05.2002. Indian Ordnance Factory Services was allocated to the applicant in view of his merit position. The applicant was placed at Sl.No.637 in the seniority list published by the department on 11.08.2015. The grievance of the applicant is that though the immediate juniors of the applicant namely Shri Anil Kumar Yadav was allowed to join w.e.f. 01.07.2003 and Sh. Rupesh Kumar Srivastava was allowed to join on 01.01.2003 and they have been extended the benefits of old pension scheme. However, offer of appointment order dated 10.10.2003 was issued to the applicant requiring him to join w.e.f. 01.01.2004 and as the new pension scheme

has since been notified and became effective w.e.f. 01.01.2004, the applicant is deprived of the benefit of Old Pension Scheme and is being regulated by the New Pension Scheme.

4. The applicant raised his grievance before the Respondent No.2 in the year 2006, 2009 and 2011. However, the said plea of the applicant was rejected by the Respondent No.2 without considering the relevant facts. Aggrieved of the same, the applicant submitted a comprehensive representation dated 02.05.2016 (Annexure A-4) to the Respondent No.1 through Proper Channel. In the said representation the applicant has submitted that offer of appointment was issued on 10.10.2003, requiring him to join on 01.01.2004. The applicant enquired from the concerned branch of the Respondent No.2 as to whether he could join before 01.01.2004, however, the applicant was instructed to report and join only on the date mentioned in the offer letter dated 10.10.2003. He also submitted that though he has joined at later date than his juniors, he was rightly placed higher in the seniority list on the basis of his position in the merit list as such he should not be deprived the benefits of Old Pension Scheme on account of delay attributable to the department and not in any

manner to him in view of the law settled by the Hon'ble High Courts in series of cases. The applicant also submitted relevant portion of such judgments with details. However, the respondents have rejected the claim of the applicant vide impugned order without due consideration of the relevant facts and law on the subject. Hence this OA.

5. The respondents have filed Counter Reply to the OA. The facts as contended by the applicant have not been disputed by the respondents. However, they have submitted that they could receive the Police Verification Report in respect of the applicant only on 02.07.2003 from the office of Deputy Commissioner of Police (Special Branch), Delhi. As the July session of Induction Training Programme had already started with effect from 01.07.2003, the respondents have no other alternative but to direct the applicant vide offer letter dated 10.10.2003 to join the training programme with effect from 01.01.2004. They have further justified that as the junior batch mates of the applicant could join earlier are in receipt of old pension scheme, however, the applicant who joined the services only 01.01.2004 i.e. the date with effect from which the new pension scheme has come into

force, he is being governed under the new pension scheme.

6. In the Counter Reply the respondents have taken the following preliminary objections also:-

(i) The applicant has not approached this Tribunal with clean hands and has suppressed material facts.

(ii) The present OA is without any cause of action, therefore, the same is liable to be dismissed.

(iii) The present OA is barred by limitation as prescribed under Administrative Tribunals Act, 1985, therefore, the same is liable to be dismissed.

7. The applicant has filed Rejoinder Affidavit denying and disputing the objections raised by the respondents in their Counter Reply and have reiterated his claim and grounds raised in the Original Application. In the OA as well as in the Rejoinder Affidavit the applicant has relied upon the judgements of Hon'ble High Court and of this Tribunal in series of cases to substantiate his claim. During the course of hearing the learned counsel for the applicant has submitted that impugned order dated 22.08.2016 suffers from virus of arbitrariness and discrimination and the same is in violation of Fundamental Rights of the applicant, granted under Articles 14 and 16 of the Constitution of India. He

further argues that persons juniors to the applicant in merit list as well as in the seniority list have been allowed the benefits of old pension scheme whereas the applicant has been deprived of the benefits of old pension scheme on the sole ground that the applicant could join the services with effect from 01.01.2004 only in response to the offer letter dated 10.10.2003. He further contends that delay if any caused in joining of the applicant is clearly attributable to the respondents and the applicant cannot be made to suffer for no fault of his.

8. The learned counsel for the applicant places reliance upon the order/judgement dated 11.01.2018 of Division Bench of Hon'ble High Court of Delhi in Writ Petition No.267/2018 titled ***Union of India and Another Vs. Pankaj Kumar Singh and Others***. Paras 11 to 16 thereof read as under:-

“11. Coming first to the plea taken by learned counsel for the petitioners that the O.A. filed by the respondent No.1 ought to have been rejected on the ground of delay and laches, we may note that the Tribunal has dealt with the said objection in the impugned order and observed that the respondent No.1 had sought legal recourse only when the petitioners did not finalize his case despite the fact that the petitioner No.2/Director General of Naval Armament had itself considered his case and vide letter dated 27.8.2013, forwarded his representations to the Naval Head Quarters with a recommendation and subsequently, a reminder dated 18.12.2014 was also sent by the petitioner No.2 to the Naval Head Quarters. It was only when the respondent No.1 did not receive any response from the petitioners that he

was compelled to approach the Tribunal for relief in April, 2015. We are inclined to concur with the view taken by the Tribunal and are of the opinion that the delay on the part of the respondent No.1 in seeking legal recourse has been adequately explained and the respondent No.1 cannot be non-suited on this ground.

12. *In any event, in a matter relating to extension of benefits of pension under one scheme or the other, the court must be mindful of the fact that the said benefit shall ensure in favour of an employee only on his superannuating and in this case, the respondent No.1 had flagged the issue as long back as in the year 2004, immediately after joining service and the petitioner No.2 had also recommended his case not too long ago, in the year 2013-14.*

13. *The second plea taken by the learned counsel for the petitioners to assail the impugned order is that the petitioners cannot be blamed for the delay in completion of the pre-appointment formalities, which included receipt of a medical examination report, verification of caste, character and antecedents etc. and there was no delay on the part of the petitioners in obtaining the character and antecedent reports of the respondent No.1. It is submitted that the delay in issuing the letter of appointment is on account of administrative delay in receiving the aforesaid reports from the District Magistrate, Supaul, Bihar and it is not attributable to the petitioners.*

14. *We may note that in a recent decision of this Court in some connected cases, lead matter being WP(C) 6525/2016 entitled V. Ramana Murthy & Ors. vs. UOI and Ors., decided on 11.9.2017, after examining several decisions on the aspect of extension of the benefits of the OPS vis-a-vis the NPS to govt. servants, who were appointed after 31.12.2003, including pronouncements in W.P(C) No. 5400/2010, Avinash Singh vs. UOI & Ors. dated 26.5.2011, W.P(C) No. 3827/2012, Naveen Kumar Jha vs. UOI vs. Ors. dated 02.11.2012, W.P.(C) No. 3834/2013, Parmanand Yadav & Ors. vs. Union of India & Ors. dated 12.2.2015, and W.P(C) No. 2810/2016, Inspector Rajendra Singh & Ors. vs. UOI & Ors. dated 27.3.2017, a Co- ordinate Bench has observed that where the selection process had commenced before the cut off date, i.e., before 31.12.2003 and pursuant thereto, while some officers from the same batch of candidates had joined service before the said date and were covered under the OPS but due to fortuitous reasons, others had joined later on*

and the said delay in joining could not be attributed to them, then they too ought to have been extended the benefit of the OPS.

15. *The fact position in the present case is no different. Out of five candidates, who were successful in the examination in question, the Railway Board had issued offers of appointment to three candidates on 09.08.2002, which was prior to the cut off date i.e., 31.12.2003, whereas the respondent No.1 and another successful candidate were issued their offers of appointment, in March, 2004. Having regard to the fact that the selected candidates from the same selection process who were a part of the same selection batch were granted the benefit of the OPS by the petitioners, we see no reason or justification for depriving the respondent No.1 of the said benefit.*

16. *In view of the facts and circumstances of the present case and for the reasons noted hereinabove, we are of the opinion that the impugned order, passed by the Tribunal does not suffer from the vice of illegality, arbitrariness or perversity which would warrant interference.”*

9. He further places reliance upon the judgement dated 08.12.2016 of a Division Bench at Principal Bench of this Tribunal in Original Application No.2562/2015 titled **Rajeev Shukla vs Union of India and Others.**

Paras 7 and 8 of the same read as under:-

“7. We have no doubt in our minds that various orders/judgments cited by the applicants have clearly settled the principle that in case the joining of the applicants beyond 1.01.2004 is on account of appointment letters being delayed by the respondents, the applicants should not be made to suffer and they should be considered along with their batch mates for pensionary benefits. In this case, all the applicants were treated belonging to 2003 batch, i.e. before 1.01.2004. The respondents delayed in issuing appointment letters; as a result, the applicants could not join before 1.01.2004. Thus, they are eligible to the benefits of the orders/judgments cited.

8. *In view of the above discussion, the OA is allowed and the respondents are directed to*

treat the applicants as entitled to the Old Pension Scheme. Necessary orders in this regard would be issued by the respondents within a period of sixty days from the date of receipt of a certified copy of this order. No costs.”

10. Further reliance is placed by the learned counsel for the applicant on the judgement dated 18.04.2016 of the Principal Bench of this Tribunal in Original Application No.2945/2015 titled **Sh.Narayana Rao Battu vs. Union of India and Others**. Paras 4 and 5 whereof read as under:-

*“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. 6 OA-2945/2015*

(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 OA560/2012 (V.M. Joseph Vs. UOI & Ors.).

(viii) Ernakulam Bench of CAT judgment dated 28.06.2013 in OA724/2012 (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.”

11. The learned counsel for the respondents on the basis of Counter Reply filed by the respondents argued that OA is barred by limitation. He submits that applicant was appointed way back in the year 2004 and he has filed the OA only in the year 2017. However, he has not been able to substantiate such arguments inasmuch as the applicant has raised his grievances right from the year 2007 and Competent Authority i.e. Respondent No.1 has finally rejected the claim only vide impugned order dated 22.08.2016 and the OA had been filed on 08.08.2017 i.e. within one year i.e. within limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985. Moreover, it is worth noting that the applicant has merely claimed extension of benefit of various judgments of this Tribunal and principle of law settled by the Hon’ble High Court of Delhi in a series of cases. Even the respondents

in their communication dated 24.01.2017 (Annexure A-8) have admitted that this Tribunal and the Hon'ble High Court have directed the respondents in the cases referred there to grant the benefit of Old Pension Scheme where there is delay attributable to the department(s) in enabling the candidates to join before the cut-off date i.e. 01.01.2004 in the matter of pension scheme. In this background the respondents who have themselves delayed the joining of the applicant can't succeed in taking the objection of OA being barred by limitation, delay or laches. It is further noted that in view of the nature of relief sought, the cause of action is continuing one. Besides no third party interest is involved. Otherwise also, the respondents being model employer should have extended the benefit to the applicant as well at their own when it has been known to them that the delay in joining along with batchmates is not attributable to the applicant and the issue has already been adjudicated by this Tribunal and Hon'ble High Court(s) in a catena of cases. Moreover, the preliminary objection of limitation, as raised by the respondents, is without any basis and such objections are not sustainable in view of the law laid down by the Hon'ble High Court in para-11 and 12 of ***Pankaj Kumar Singh's case (supra)***. Besides, the

Hon'ble High Court of Delhi in the case of **Inspector Rajendra Singh & Others vs. Union of India and Others** reported in 2017 SCC OnLine Del 7879: (2017) 240 DLT 576 (DB) ruled as under:-

"36. However, in Tukaram Kana Joshi & Ors. vs. Maharashtra & Ors. vs. Maharashtra Industrial Development Corporation & Ors. reported in (2013) 1 SCC 353, the Supreme Court held:-

"14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged, by delay on the part of the Petitioners. (Vide: Durga Prasad v. Chief Controller of Imports and Exports, (1969) 1 SCC 185 : AIR 1970 SC 769; Collector, Land Acquisition, Anantnag v. Mst. Katiji, (1987) 2 SCC 107 : AIR 1987 SC 1353; Dehri Rohtas Light Railway Company Ltd. V. District Board, Bhojpur, (1993) 2SCC 598 : AIR 1993 SC 802; Dayal Singh v. Union of India, (2003) 2 SCC 593 : AIR 2003 SC 1140; and Shankara Co-op Housing Society Ltd. v. M. Prabhakar, (2011) 5 SCC 607 : AIR 2011 SC 2161)"

37. In H.D Vora v. State of Maharashtra reported in (1984) 2 SCC 337, the Supreme Court condoned delay of 30 years in approaching the court where it found violation

of substantive legal rights of the applicant in that case.

38. In this case, the petitioners have not retired from service. After persons similarly circumstanced, if not identically circumstanced, as the petitioners were, given the benefit of the Old Pension Scheme, may be, pursuant to orders of this Court, the petitioners approached this Court for relief. Rejection of the writ petition only on the ground of delay, would perpetrate discrimination between persons similarly circumstanced.

39. It is well settled that relief under Article 226 of the Constitution of India is discretionary. When there is acquiescence and laches and delay in approaching this Court, discretionary relief might be declined. However, delay is no bar to entertaining a Writ Petition. If entertaining a delayed writ petition entails the consequence of unsettling things already settled, relief may be declined. However, flagrant discrimination cannot be allowed to continue, only because of delay. Illegality must be redressed. In this case grant of relief would not result in unsettling things already settled. We are not inclined to reject the writ petition on the ground of delay.”

12. The SLP (Civil) filed against the same is stated to have been dismissed vide SLP (Civil) Diary No(s).39335/2017 vide order dated 08.01.2018 and the directions of the Hon’ble High Court is stated to have been complied with by the respondents.

13. In the another judgment ***M.V. Sheshagiri vs. Union of India & Others*** reported in 2018 SCC OnLine Del 13001 has rules as under:-

“22. The counsels for the Respondents have also countered the present petition on the ground that there has been a delay on the part of the Petitioners in approaching the Court. The judgment of this Court in Naveen Kumar Jha (supra), was challenged by the Respondents before the Supreme Court. The challenge could

not be sustained and the petition was dismissed. We are informed that Respondents have since implemented the aforesaid decision. On this issue, it would be apt to refer to the judgment of the Supreme Court in State of Uttar Pradesh v. Arvind Kumar Srivastava (2015) 1 SCC 347 has held as under:

“23. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the Appellants as well as the Respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment W.P(C) 6275/2016 & connected matter Page 11 of 12 rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma and Ors. v. Union of India (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

23. In view of the aforesaid decision, since the Petitioners are claiming parity with Naveen Kumar Jha (supra), we would not like to deny them the relief on account of delay in approaching the Court. A writ of mandamus is issued to the Respondents directing them to notionally re-fix Petitioners' seniority with reference to his merit position in the select list in their respective examinations, that is, with those who have joined the CRPF pursuant to the said examinations. Petitioners shall also be entitled to all consequential benefits, except for back wages.

24. Respondents are also directed to treat the Petitioners as members of the old pension scheme that was in force till 31st December 2003.”

Though, the respondents have taken the preliminary objection that the applicant has suppressed

material facts and has not approached this Tribunal with clean hands. However, such objections are vague, unsubstantiated and without any basis. Similar is the position of preliminary objection of the respondents regarding the OA being without cause of action.

14. In view of the aforesaid facts and law, I am of the considered view that none of the preliminary objections, raised by the respondents is sustainable in law. On merits the learned counsel for the respondents submits that there is no delay on the part of the respondents in issuing the offer of appointment letter dated 10.10.2003 or allowing him to join inasmuch as Police Verification Report in his case could be received only on 02.07.2003 and by that date July session of training has started at Ordnance Factory Staff College, Ambajhari and in absence of any instructions for joining training in the middle, the respondent has no alternative but to direct the applicant to report only on 01.01.2004 to join January session of IOFS induction programme at Ordnance Factory Staff College, Ambajhari and since the applicant could join government service with effect from 01.01.2004 he would be covered under new restructured defined contribution pension system (New Pension

Scheme) as per the Ministry of Finance OM dated 14.01.2004.

15. Learned counsel for the respondents also relied upon the order/judgement dated 27.03.2019 of Division Bench Hon'ble High Court of Delhi in Writ Petition No.10306/2016 titled ***Union of India and Others vs. Dr.Narayan Rao Battu & Another.*** Para-21 of the judgment read as under:-

“21. In our view, once the new pension scheme unambiguously provided that all new incoming appointees, whose appointment was made after a specific cut-off date i.e. 01.01.2004, would be squarely governed by its provisions, the said cut-off date could not be tinkered with, except in those limited circumstances when the court finds that the appointment was delayed due to any pending litigation, or due to lapses attributable to the employer.”

16. I have considered the matter on merit. It is undisputed that the applicant's juniors in the merit list as well as in subsequent seniority list are being extended the benefit of old pension scheme whereas the applicant is being governed by the New Pension Scheme as he could not join along with them for the only reason that the respondents could get the Police Verification Report only on 02.07.2003 and the relevant training has started with effect from 01.07.2003 and in absence of any rules the respondents could not allow the applicant to join the said training along with his juniors in the middle of the training . Though, the offer of appointment was issued on

10.10.2003, however, the applicant was required to report on 01.01.2004. This precise fact clearly indicates that delay in joining of the applicant is not at all attributable to the applicant and therefore he is not liable to suffer in the matter of any benefit including benefit arising out of old pension scheme, particularly in view of the principle of law as laid down by the Hon'ble High Court in the aforesaid cases including the **Pankaj Kumar Singh's case (supra)** and also the judgement of co-ordinate bench of this Tribunal in the case of **Rajeev Shukla's case (supra)**.

17. One is further supported in this regard by the judgment of the Hon'ble High Court of Delhi in the case of **Delhi Jal Board vs. Surender Kumar & Others** reported in 2019 SCC OnLine Del 8627, a few paras whereof read as under:-

“8. Before us, learned counsel for the petitioner reiterates the same plea taken before the Tribunal and submits that the respondents having been appointed after 01.01.2004, they are bound to be covered by the provisions of the new pension scheme which was made applicable to all employees joining government service after 01.01.2004

9. We have considered the submission of the learned counsel for the petitioner and perused the record with his assistance, and do not find any infirmity in the impugned order. Merely because the appointment of the respondents was delayed due to the pendency of the LPA before this Court, the respondents cannot be made to suffer.

Once it is an admitted position that their batch mates were issued letters of appointment in 2003 itself, and that had the respondents been issued similar letters of appointment in time, they would also have become members of the old pension scheme like their batchmates; then the respondents could not be discriminated vis-a-vis their batchmates owing to a delay, which is not attributable to them.

10. In this regard, reference may be made to a decision of this Court in Inspector Inspector Rajendra Singh v. UOI (2017) 240 DLT 576 (DB) wherein this Court, while dealing with a similar fact situation where the appointment of some of the selected candidates was delayed on account of them being initially found to be medically unfit, had allowed the writ petition. The Court had, by relying on an earlier decision of this Court in Shoorvir Singh Negi v. Union of India in WP (C) 5830/2015 had observed as under:

"30. The respondents have contended that the final results of the petitioners had been declared by the Staff Selection Commission in November, 2004 long after the New Pension Scheme was given effect. If there was delay in declaration of the results and issuance of letters of appointment, the incumbents are not to suffer. May be, as contended by the respondents, the petitioners had been declared unfit. However, in the Review Medical Examination by Review Medical Board, they were found fit. It is not the case of the respondents that they were unfit earlier by reason of any ailment or disorder, of which they were cured later. Even otherwise, there was no reason for delaying the Review Medical Examination and the Interview. In any case, as observed above, the issues are covered in favour of the petitioners, by the judgment of the Supreme Court in Shoorvir Singh Negi (supra).

31. In our considered opinion, there can also be no discrimination between batchmates, only because some were, at the time of appointment, informed that the New Pension Scheme would apply, while others were not."

11. In view of the aforesaid, we find no reason to interfere with the impugned order. The writ petition and pending applications, being meritless, is dismissed."

18. The Hon'ble High Court has reiterated the aforesaid principle again in **Tanaka Ram & Others vs. Union of India and Others** reported in 2019 SCC OnLine. Paras 17 to 18 reads as under:-

"17. In other words, the BSF itself has accepted that the benefit of the decision in Parmanand Yadav (supra) and the option to continue the Old Pension Scheme should be extended to all those who had been selected in the exam conducted in 2003 but were only issued call letters in January or February, 2004.

18. For the above reasons, the Respondents are directed to extend the benefit of the Old Pension Scheme to all the Petitioners in the present petitions and pass consequential orders within a period of eight weeks from today."

19. So far reliance placed by the learned counsel for the respondents on the judgement of Hon'ble High Court of Delhi in the case of **Dr.Narayan Rao Battu & Another** is concerned the same is not of any help to the respondents inasmuch as the applicant has not been able to join along with his juniors or batch mates for the reasons and lapses attributable to the respondents and in

any manner not attributable to him. Para 17 of the same reads as under:-

*“17. We have also carefully considered the reliance placed by the respondents upon the decisions in **Rabinder Kumar Pattanayak (supra)** and **Inspector Rajendra Singh (supra)** and find the same to be inapplicable to the facts of the present case. These decisions pertain to matters involving persons who, despite having been selected for a post, were unable to join service along with their batch mates before 31.12.2003 either because of pending litigation, or a lapse on the part of the employer leading to the delay in appointment. It was only in these limited circumstances that the Court granted them the benefit of the old pension scheme after observing that it would be unfair to deny these persons the benefits which were granted to their batch mates who had been appointed pursuant to the same selection process.....”*

20. In view of the aforesaid facts and settled legal position, I am of the considered view that the OA deserves to be allowed and accordingly the impugned order dated 22.08.2016 is quashed and set aside. Respondents are directed to treat the applicant as entitled to the benefit of old pension scheme. Respondents are also directed to issue necessary orders in this regard within a period of eight weeks from the date of receipt of a certified copy of this order. No order as to cost.

(R.N. Singh)
Member (J)

Amit/PS

