

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

OA No. 3794/2018

This the 16th day of September, 2019

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

Sh.Mahesh Kumar Yadav, Sr.Acctt.,
Group 'B', S/o Late Ramji Yadav,
Aged 37 years # 8368344523
R/o B-742, G.D. Col., Mayur Vihar PH.-III
Delhi, working in the O/o the
Controller of Accounts,
M/o Hous. & Urban Affairs, New Delhi.

**... Applicant
(By Advocate: Sh. D.P. Sharma)**

VERSUS

1. Union of India through
The Secretary,
Department of Expenditure,
M/o Finance, South Block, New Delhi.
2. The Secretary,
Department of Personnel & Training,
M/o Personnel, Public Grievances & Pension,
New Delhi.
3. The Controller General of Accounts,
Department of Expenditure, M/o Finance,
Mahalekha Niyantark Bhawan,
GPO Complex, Block E,
Aviation Colony, INA Colony,
New Delhi.
4. The Chief Controller of Accounts,
M/o Housing and Urban Affairs, F-Wing,
Nirman Bhawan,
New Delhi.

...Respondents

(By Advocate: Sh. M.S. Reen)

**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 10.08.2018 (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 applicant is presently working as Sr. Accountant in the Pay & Accounts Office (Food Zone), Ministry of Housing and Urban Affairs, I.P. Bhawan, New Delhi under the administrative control of Chief Controller of Accounts (Respondent No.4). The Staff Selection Commission, Govt. Of Indian, DOP&T, M/o Personnel, Public Grievances & Pension, New Delhi has issued an advertisement in the Employment Notice to conduct a Competitive Examination under Scheme-B of the Combined (Graduate Level) Examination, 1999, for appointment to the post of Divisional Accountant and Junior Accountant/Auditor/UDC as per the vacancies intimated

by various Department of the Union. The applicant applied and participated in such examination and was declared successful vide final result which was published in Employment News 27 January-2 February 2001 and was recommended for appointment. Subsequently he was informed by the Under Secretary (Admn.NR), that based on the Select List, his nomination has been made for offer of appointment to be issued to him by the Principal Accounts Office, M/o Urban Development, New Delhi, vide Memorandum dated 18.08.2003 (Annexure A-4). Thereafter, the offer of appointment was issued for the post of Accountant to the applicant vide Memorandum No.A-12012/2/2003-4/NDL/Acctt./PrAO/Admn.1/3214 dated 05.09.2003 (Annexure A-5). Accordingly, the applicant was called for along with the original certificate for verification vide letter dated No.A-12012/2/2003-04/NDL/Acctt. /Pr.AO/Admn.1/7369 dated 05.01.2004 and issued formal appointment order vide Memorandum No.A-12012/2/2003-4/NDL/Acctt./PrAO/Admn.1/8102 dated 30.01.2004 (Annexure A-6 Colly). The applicant, thereafter joined on the post of Accountant w.e.f. 13.02.2004. It was mentioned that 'He will be governed by New Restructured Defined Contribution Pension System' vide Sr. Accounts Officer Office Order No.60 issued with

Memorandum No.PA/DGW/CPWD/POSTING TRF/2003-04/9822-24 dated 03.03.2004 (Annexure A-7).

4. In the meantime, the applicant was promoted to the post of Senior Accountant in the pay scale of Rs.5500-175-9000 w.e.f. 01.04.2007 vide Office Order No.102/2007 dated 11.05.2007 and a Gradation List as on 01.04.2008 in respect of Sr. Accountants and Accountants was issued by the respondents vide Circular No. A-23021/5/2006/Gradation list/LDC/Admin-II/Pr.AO/S-6/103 dated 03.04.2008 (Annexure A-8 (Colly)). In the aforesaid Gradation List, the applicant has been shown senior to Mr.Dharmender, a batch mate of the applicant having qualified in the same Examination, who has been covered under the Old Pension Scheme under the CCS (Pension) Rules, 1972 for having been offered the appointment and joined with the respondents on 22.10.2003 i.e. prior to 01.01.2004 whereas the applicant is deprived of the benefit of Old Pension Scheme and is being regulated by the New Pension Scheme.

5. The applicant raised his grievance before the Respondent No.3 vide representation dated 07.05.2018 (Annexure A-9), which was rejected by the Competent Authority i.e. Respondent No.3 vide impugned order dated 10.08.2018 (Annexure A-1). Hence this OA.

6. 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 vide Memorandum No.A-12012/2/2003-04/NDL/Acctt./PrAO/Admn.I/3212 dated 05.09.2003 (Annexure R-2), a Memorandum was issued to the applicant with a direction to send duly filled attestation form, original educational certificate and caste certificate along with his acceptance letter and he was also directed to report to Civil Surgeon/Chief Medical Officer, District Hospital, Samastipur for his Medical Examination (Annexure A-2). Thereafter, vide letter dated 20.09.2003, the applicant sent his willingness and other relevant documents. In his Attestation Form, it has been mentioned that one case CR No.934/98 dated 05.10.1998 (Annexure R-3) of criminal nature is pending against him. Thereafter, vide letter dated 03.11.2003 (Annexure R-4) verification report was called from the District Magistrate, Samastipur, Bihar followed with reminder dated 11.12.2003 (Annexure R-5). The verification report dated 22.12.2003 in respect of the applicant was received on 29.12.2003, in which it was mentioned that as per local police record nothing was there against the applicant. Thereafter, the applicant was directed to submit his

original certificate regarding age, educational qualifications vide order dated 05.01.2004 (Annexure R-7). It is contended that vide letter dated 19.01.2004 (Annexure R-8) the applicant has submitted the aforesaid documents only thereafter, the appointment letter was issued to him vide Memorandum No.A-12012/2/2003-04/NDL/Acctt./PrAO/Admn.I/8102 dated 30.01.2004 in which at Sl.No.6 of terms and conditions it was clearly mentioned that “he will be governed by New Restructured Defined Contribution Pension System as per M/o Finance D/O Economic Affairs (ECB & PR Division) Notification dated 22.12.2003 circulated vide CGS’s O.M. No.1(7) (2)/2003/TA/616 dated 29.12.2003”. The applicant has reported for duty on 13.02.2004 (Annexure R-10). The offer of appointment was issued to the applicant on 05.09.2003 (Annexure R-13) and he accepted it on 08.09.2003. Accordingly, for verification of his Character and antecedent, the respondents requested to the Deputy Commissioner of Police, Special Branch, New Delhi vide their letter dated 12.09.2003 (Annexure R-15). Thereafter, vide letter dated 26.09.2003 (Annexure R-16) the same was received wherein it has been mentioned that nothing against the applicant on the record of Delhi Police Special Branch till date and only thereafter, the formal

appointment order was issued vide order dated 22.10.2003 (Annexure R-17).

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

- (i) The present application is ill founded and lacks any merit as such deserves to be rejected summarily.
- (ii) The respondents reserves their right to amend/modify the reply affidavit later on, if new facts having a bearing on the case come to their notice.
- (iii) No cause of action has accrued in favour of the applicant and against the respondents.
- (iv) The application is misconceived and is not maintainable under the law.

8. 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 judgement of Hon'ble High Court and of this Tribunal in series the cases to substantiate his claim. During the course of hearing the learned counsel for the applicant has submitted that impugned order dated 10.08.2018 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 18.08.2003. He further contends that delay if any caused in joining of the applicant is clearly attributable the respondents and the applicant cannot be made to suffer for no fault of his.

9. The learned counsel for the applicant places reliance on the following judgments:-

(i). Dated 12.02.2015 in Writ Petition (C) No.3834/2013 Parma Nand Yadav & Others vs. Union of Indian & Others of Hon'ble High Court of Delhi.

(ii). Dated 28.06.2013 in P. Rajesh Kumar & Others vs. Union of India & Others, O.A.No.724/2014 of CAT, Ernakulam Bench dated 28.06.2013.

(iii). Dated 15.02.2016 Sheeba B. & Another vs. Union of India & Others in O.A.No.00020/2015 of CAT, Ernakulam Bench.

(iv). H.D. Vora vs. State of Maharashtra & Othrs reported in (1984) 2 SCC 337.

10. To be precise, contents of all the above judgments are not being reproduced. Hence, the judgments of ***Parma Nand Yadav (supra)*** as well as a few others have been considered 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 rejected on the ground of delay and latches, 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.”*

11. A Division Bench at Principal Bench of this Tribunal in Original Application No.2562/2015 titled ***Rajeev Shukla vs Union of India and Others*** has occasion to deal with a identical issue in its judgment dated 08.12.2016. 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.”*

12. Further in its judgement dated 18.04.2016 the Principal Bench of this Tribunal in Original Application No.2945/2015 titled ***Sh.Narayana Rao Battu vs. Union***

of India and Others in Paras 4 and 5 has held 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.”

13. 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 2018. However, he has not been able to substantiate such arguments inasmuch as the applicant has raised his grievances right from the year of his selection and the Competent Authority has finally rejected the claim only vide impugned order dated 10.08.2018 and the OA had been filed on 28.09.2018 i.e. within one year i.e. within limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985. Moreover, it 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 it is an admitted fact 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 latches. Further 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)** and also in view of principle of law laid down by 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) wherein it has been 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."

14. 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.

15. In the another judgment ***M.V. Sheshagiri vs. Union of India & Others*** reported in 2018 SCC OnLine Del 13001 has ruled 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, preliminary objection that no cause of action has accrued to the applicant. However, such objections are vague, unsubstantiated and without any basis.

16. Accordingly, we are 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 any delay on the part of the respondents in issuing the offer of appointment letter dated 05.09.2003 or allowing him to join inasmuch as Police Verification Report dated 22.12.2003 in respect of the applicant was received on 29.12.2003, in which it was mentioned that as per local police record nothing against is there against the applicant. Since the applicant could join government

service with effect from 13.02.2004 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.

17. 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 22.12.2003 and only thereafter the formal appointment letter was issued on 30.01.2004. 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 arriving 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)***.

18. I may further note that this view gets further strength from 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

wherein it has been ruled 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."

19. 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.”

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 10.08.2018 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-

