

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.2513/2017

Order reserved on 15th October 2019

Order pronounced on 26th November 2019

Hon'ble Ms. Aradhana Johri, Member (A)

1. Dr. Anuj Kumar s/o Laljee Singh
Aged 41 years
r/o 190, Pocket V, Mayur Vihar
Phase I, New Delhi – 91
Designation – Insurance Medical Officer
2. Dr. Shekar Sharma s/o Jagdish Prasad Sharma
Aged 38 years
r/o C-119, Sector 41, NOIDA, UP 201301
Designation – Insurance Medical Officer
3. Dr. Rajeev Shukla s/o Sh. Balram Dutt
Aged 40 years, R/o I-1, C-24/C
Raj Heights, Shalimar Garden
Extension II, Sahibad, Gaziabad, UP 201005
Designation – Insurance Medical Officer
4. Ms. Swapna Sinha d/o Dr. V B P Sinha
Aged 44 years
r/o HN-17, Sector 15A, NOIDA (UP)
Designation – Insurance Medical Officer

..Applicants
(Mr. Nitish Kumar Singh and Mr. Chirag Tuteja, Advocates)

Versus

1. The Secretary
Ministry of Labour & Employment
Govt. of India
Shram Shakti Bhawan, Rafi Marg
New Delhi – 110 001
2. Director General
Head Quarters Office
Employee State Insurance Corporation
Panchdeep Bhawan, Kotla Road
New Delhi – 110 002

..Respondents
(Mr. Rajeev Kumar and Mr. Amar Pandey, Advocates for respondent
No.1 – Mr. Arjun Singh and Ms. Satya Siddiqui, Advocates for
respondent No.2)

ORDER

The applicants are Insurance Medical Officers (IMOs) in Employees' State Insurance Corporation (ESIC), respondent No.2 herein. They joined the service of respondent No.2 after 01.01.2004, though the process of recruitment was ongoing before that. The Standing Committee of respondent No.2, in its 165th meeting held on 23.04.2004, approved the adoption of the Defined Contributory Pension Scheme to the new entrants in the ESIC w.e.f. 01.01.2004. Since the applicants joined after 01.01.2004, they were held to be mandatorily covered under the new contributory pension scheme.

2. The applicants have contended that since they were recruited under Advertisement dated 15.02.2003 and it is only due to negligence and inaction of the respondents, that their appointment letters were issued on 22.03.2004, 12.04.2004, 02.04.2004 and 08.04.2004 respectively, i.e., after the cut-off date, therefore, they should be given the benefit of old pension scheme. They have stated that this benefit was given to Ayurvedic Physicians and Dental Surgeons, whose posts were advertised under the same Advertisement, as those of the applicants.

3. The applicants have cited the case of Hon'ble High Court of Delhi in **Parma Nand Yadav & others v. Union of India**

& others (W.P. (C) No.3834/2013) decided on 12.02.2015. In the cited matter, the Staff Selection Commission had issued an Advertisement inviting applications to fill up the posts of Sub Inspector in four Central Para Military Forces, i.e., BSF, CISF, CRPF and ITBP. The results were declared on 28.07.2003. Depending upon the option exercised and the merit position, empanelled candidates were allocated the paramilitary force. Letters offering appointment were issued by the various organizations on various dates in the month of October, 2003, but by BSF, they were issued in December, 2003. On 22.12.2003, the new contributory pension scheme was introduced to be implemented from 01.01.2004. The Hon'ble Court relied on the cases of **Avinash Singh v. Union of India & others** (W.P. (C) No.5400/2010) decided on 26.05.2011 and **Naveen Kumar Jha v. Union of India & others** (W.P. (C) No.3827/2012) decided on 02.11.2012, to draw benefit to the Sub Inspectors joining BSF. In the case of **Avinash Singh** (supra), the Hon'ble Court held as under:-

“17. It is settled law that if appointment is by selection, seniority of the entire batch has to be reckoned with respect to the merit position obtained in the selection and not on the fortuitous circumstances on the date on which a person is made to join.

18. We highlight in the instant case the fortuitous circumstance of the petitioners being made to join as Assistant Commandant on 08.08.2005 is not the result of anything created by the petitioners but is a result of a supine indifference and negligence on the part of the ITBP officials.”

Finally, the Court held as follows:-

“7. When letters offering appointment were issued, it was not indicated that the candidates would be members of the new contributory pension scheme, which condition was sought to be inserted in the letters offering appointment on May 18, 2004.”

4. The respondents have denied the claim of the applicants and have stated that ESIC is an autonomous organization and Section 17 (2) of ESIC Act, 1948 clearly specified the following”

“The method of recruitment, salary and allowances, discipline and other conditions of service of the members of the staff of Corporation shall be such as may be specified in the regulations made by the Corporation in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scale of pay.”

Therefore, all the employees are bound by the regulations of the Corporation.

5. They have further stated that since the Standing Committee, in its 165th meeting held on 23.04.2004, approved the adoption of Defined Contributory Pension Scheme to the new entrants in the ESIC w.e.f. 01.01.2004, this system has been implemented for all the new recruits and no other similarly placed employees, i.e., the entrants recruited as IMO Grade II have been allowed the benefit under the old pension scheme.

6. They have also cited the decision of Hon'ble High Court of Delhi in **Sanjay Kumar Thakur & others v. North Delhi Municipal Corporation of Delhi & others** (W.P. (C) No.5828/2016) decided on 01.12.2016. The Court relied on the judgment of Hon'ble Supreme Court in **Marripati Nagaraja & others v. Government of Andhra Pradesh & others** (2007) 11 SCC 522, wherein it was held that the new pension scheme has been made applicable to those who joined on or after 01.01.2004. Significantly, it was held that whether or not a rule was to be given retrospective effect is within the domain of the State and unless the rule was set aside, it would not be unconstitutional.

7. The Hon'ble Court further referred to its judgment in the case of **Shailender Kumar & others v. Delhi High Court (through Registrar General) & another**, (2012) 189 DLT 524, wherein it was held as under:

“2. The main contention of the petitioners is that the offer of appointment having been made to them prior to 01.01.2004 and their inability to join the post by 31.12.2003 not being attributable to any lapse on their part, the benefit of CCS(Pension) Rules, cannot be denied to them, particularly, when this was extended to those who were selected simultaneously with them but were able to join on or before 31.12.2003, on account of their medical examination and police verification having been completed by that date. In our view, the contention is devoid of any merit. The Government was well within its right in discontinuing the applicability of CCS (Pension) Rules, 1972 and applying a new pension scheme to those who were to join the service after promulgation of the new pension scheme. It was for the Government to decide, in

its wisdom, as to whether it wanted to apply the new pension scheme to those who had entered service on or after 01.01.2004 or to those who were offered appointment on or after 01.01.2004. The Government having decided to discontinue the applicability of CCS (Pension) Rules and to extend the new pension scheme to all those who were to join service on or after 01.01.2004, irrespective of the date on which offer of appointment was made to them, the petitioners do not have any legal right to claim applicability of CCS(Pension) Rules, 1972 to them. It is not as if the new pension scheme has been introduced after the petitioners had joined service of the Government. The petitioners were not in the service of the Government prior to 01.01.2004 and, therefore, they had no right to the posts of LDC in District Sessions Court, when the new scheme was promulgated by the Government. Thus, this is not a case of service condition of the employees being varied by the Government to their detriment. Even if the petitioners could not join the service on or before 31.12.03 on account of no fault on their part that would make no difference since the relevant date is the date of joining the service and not the date on which the employment was offered to them. If we accept the contention that the offer of appointment having been made to the petitioners prior to 01.01.2004, they are entitled to be governed by CCS (Pension) Rules, that would be contrary to the terms of the scheme framed by the Government. We must take note of the fact that there has necessarily to be some timelag between the making of offer for appointment and the selected candidate joining the service of the Government because medical examination and police verification must necessarily precede the joining of service by him. If the medical examination of some persons who are offered employment along with the petitioners was conducted and/or their police verification was done before the medical examination and/or police verification of the petitioners and consequently, those persons were able to join service on or before 31.12.2003 no benefit on that account accrues to the petitioners since completion of medical examination and police verification depends upon a lot of factors including the place where the candidate is residing, the hospital in which he is to be medically examined, the date fixed by that hospital for medical examination, the time taken by the concerned police official in verification of the antecedents etc. If a person is offered employment say in last week of December, 2003, he cannot claim benefit of CCS (Pension) Rules because some time is necessarily required

for his medical examination and police verification and, therefore, it will not be possible for him to join the service of the Government on or before 31.12.2003.

xxxxxxxx

5. However, in the case before us, there was no order passed by any Court restraining the respondents from making appointments to the post of LDC in District & Sessions Court. They were in a position to join service soon after their medical examination and police verification was complete. On the other hand, in the case of Dr. Pawan Kumar N. Mali (supra), relief was granted to the petitioners, primarily applying the principle that the order of the Court cannot prejudice anyone. Had there been no stay order in that case, the respondents in that case would have joined service prior to 01.01.2004, since not only the offer of appointment had been made to them, even their medical examination had been conducted well before the cut-off date of 01.01.2004. They were prevented from joining service, only because of stay order granted by the Court. On the other hand, none of the petitioners before this Court could have been allowed to join service prior to 01.01.2004 since the character verification in respect of all the three petitioners was received after 31.12.2003. This judgment, therefore, cannot be applied to the case before us.

6. This is not the case of the petitioners that their inability to join on or before 31.12.2003 was attributable to any negligence or lapse on the part of the respondents. If inability of the petitioners to join service on or before 31.12.2003 is not attributable to the respondents or to any order passed by a Court and was only on account of the time taken by the Hospital/Police in conducting medical examination and police verification, the petitioners cannot claim parity with the petitioners in the case of Dr. Pawan Kumar N. Mali (supra). For the reasons given in the preceding paragraphs, we find no merit in the writ petition and the same is hereby dismissed.”

(emphasis supplied)

8. In the light of these observations, the Hon’ble Court held the following:-

“23. In the present case, the delay in issue of appointment letters was not malafide or intentional. The results were declared and thereafter the dossiers of selected candidates were sent by the DSSSB on 06.12.2003. The files had to be processed and by the time the appointment letters were issued, the New Pension Scheme enforceable with effect from 1.1.2004 had become applicable. Thus, the decision of the Division Bench in the case of Shailendra Kumar (supra) would be squarely applicable.

24. In the light of the aforesaid discussion, we do not find any merit in the present writ petition and the same is dismissed affirming and upholding the order passed by the Tribunal. There would be no order as to costs.”

9. Though during the course of hearing the respondents stated that three posts were advertised together, i.e., those of IMO, Ayurvedic Physicians and Dental Surgeons, learned counsel for respondents has stated across the Bar that the appointment of IMO was not deliberately delayed, but the process took longer because there were more than 300 candidates, whereas Dental Surgeons were only 4 and Ayurvedic Physicians were 6. Therefore, it is natural that the processing time for IMO would be much more and there was absolutely no deliberate delay on the part of the respondents in completing the recruitment process.

10. Heard learned counsel for applicants and for respondents.

11. It is stated by the respondents that no other similarly placed employee, i.e., new recruited IMO Grade II have been allowed benefit under the old pension scheme since the result

itself was forwarded by Recruitment Division to Medical Administration on 15.01.2004. In the light of this contention, it cannot be said that any discrimination has been done against the applicants.

12. Further, the two other posts, which have been cited by the respondents, are separate posts and parity cannot be claimed with them. Thus, a distinction can be drawn to the ruling of Hon'ble High Court of Delhi in **Parma Nand Yadav** (supra), cited by the applicants, wherein the Sub Inspectors were selected under a common selection process and assigned different Services on the basis of their options and merit position.

13. The ruling cited by the respondents of Hon'ble High Court in **Sanjay Kumar's** case (supra) is squarely applicable to the facts and circumstances of the present case since it has been held by the said ruling that the Government has the right to fix the cut off dates for the schemes it introduces. The applicants in **Shailender Kumar's** case (supra) were on a better footing since they were offered appointment by letters dated 15.09.2003, 15.11.2003 and 12.12.2003 and the said offer of appointment was accepted as well and in those cases, even then the Hon'ble Court upheld the benefit of old pension scheme not being given since the joining was after the cut off date.

14. In light of the above, the O.A. is devoid of merit and is accordingly dismissed. No order as to costs.

(Aradhana Johri)
Member (A)

/sunil/