

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on 17th August, 2016
Decided on: March 27, 2017

+ W.P.(C) 2810/2016

INSPECTOR RAJENDRA SINGH & ORS. Petitioner

Through: Ms. Rekha Palli, Senior
Advocate with Mrs. Punam
Singh, Ms. Ankita Patnaik, Ms.
Shruti Munjal, Ms. Garima
Sachdeva and Mr.S.A. Akhtar,
Advocates.

versus

UOI & ORS. Respondents

Through: Mr. Vikas Mahajan, CGSC
with Mr. Arun Kumar, Mr. S.S.
Rai and Mr. Amit Mehta,
Advocates for UOI.

CORAM:
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

JUDGMENT

INDIRA BANERJEE, J

1. In this writ petition, the petitioners have challenged an order dated 6th February 2016, whereby the respondents have denied to the petitioners the benefit of the Old Pension Scheme as per the Central Civil Services (Pension) Rules 1972 and prayed for appropriate orders directing the respondents to extend the benefit of the Old Pension Scheme to the petitioners.
2. The petitioners, who are Inspectors in the Border Security Force had applied for recruitment in the Central Police Organisation pursuant to an advertisement issued by the Staff Selection Commission in the Employment News of 9 – 15 November 2002.
3. In the aforesaid advertisement, it was mentioned that the Staff Selection Commission would hold a Competitive Examination on 12.01.2003 for recruitment of Sub Inspectors in the Border Security Force, Central Industrial Security Force, Central Reserve Police Force and Indo Tibetan Border Police Force.

4. The petitioners duly appeared for the aforesaid written competitive examination held on 12.01.2003. The petitioners qualified in the written examination, whereupon the petitioners were asked to appear for the Physical Efficiency Test. The petitioners were thereafter directed to appear for medical examination before the Medical Board on various dates from April 2003 to June 2003.
5. By a letter dated 10.03.2003, the petitioner No. 1 was directed to appear for Physical Efficiency Test on 05.04.2003, which he did. The petitioner no.1 qualified in the Physical Efficiency Test, after which a letter dated 14.05.2003 was issued to the petitioners asking him to report for medical examination at Group Centre II, CRPF, Ajmer, on 16.06.2003. The petitioner no.1 appeared for the medical examination, but was declared medically unfit by the Medical Board. Similarly the other petitioners also cleared the Physical Efficiency Test, but were upon medical examination, declared medically unfit.

6. After being declared medically unfit, the petitioners got themselves medically examined in other reputed medical institutions, where they were declared medically fit. The petitioners thereafter applied for medical re-examination by a Review Medical Board.
7. On 28.07.2003, while the appeals of the petitioners for medical re-examination by constitution of a Review Medical Board were pending, the Staff Selection Commission declared the results of all other candidates except the petitioners, and depending upon the option exercised by them and their merit position, the empanelled candidates were allocated different paramilitary forces, that is BSF, CISF, CRPF and ITBP.
8. It is stated that candidates selected to the CRPF, CISF, and ITBP were issued letters of appointment on diverse dates and they all joined the respective forces on or before 31.12.2003. The candidates selected for appointment as Sub Inspectors in the BSF were issued offers of appointment in October 2003, and asked to join the BSF in January 2004.

9. On 22.12.2003, before the sub inspectors selected for appointment in the BSF were required to join, a new Contributory Pension Scheme was introduced with effect from January 2004. The Sub Inspectors selected to the BSF, who were directed to join in January, 2004, were deprived of the benefit of the Old Pension Scheme as existing under the Central Civil Services (Pension) Rules 1972.
10. On 28.12.2003, that is after over 6 months of the date, on which the petitioners appealed against the decision of the Medical Board, declaring them medically unfit, the petitioners were directed to appear before a Review Medical Board. All the petitioners were declared fit, after which letters dated 17.03.2004 were issued to the petitioners calling upon the petitioners to appear for interview before the Staff Selection Commission on 22.04.2004.
11. The petitioners were finally issued joining letters in March, 2005, after delay of another 11 months on the part of the Staff

Selection Commission. The letter of appointment issued to the petitioner is dated 17.03.2005.

12. By reason of the delay in issuance of appointment letters, the petitioners were denied the benefit of the Old Pension Scheme under the Central Civil Services (Pension) Rules 1972.
13. Having regard to the facts and circumstances of this case, where advertisements for recruitment to the posts of Sub Inspectors in CAPFs were issued in November, 2002, written examinations were held on 12.01.2003, Physical Efficiency Test had been held in or before April, 2003, and the petitioners appeared before the Medical Board between April, 2003, to June, 2003, and declared fit upon medical re-examination by Review Medical Board in December, 2003, it would be grossly unjust and arbitrary to deny the petitioners the benefit of the Old Pension Scheme, applicable at the time when the posts were advertised, only because of the fortuitous circumstance of their joining service after the enforcement of the New Pension Scheme, for reasons not attributable to them.

14. As observed above, the authorities concerned took six months' time to decide the appeal against the decision of the Medical Board, declaring the petitioners medically unfit. The petitioners were found fit by other Medical institutions of repute and ultimately found fit by a Review Medical Board constituted by the respondent authorities themselves on 28.12.2003. The respondent authorities unnecessarily delayed constitution of a Review Medical Board. Had the respondent authorities and in particular Staff Selection Commission acted with diligence, the petitioners could have been appointed within 31.12.2003.
15. The advertisements were for appointment of Sub Inspectors to Central Armed Police Forces including CRPF, ITBP and BSF. A common entrance examination was held for all the services. However, services were allotted having regard to the merit position of the candidates, as also the option exercised by them.
16. The differentiation between Sub Inspectors who applied pursuant to a common advertisement and were selected after

going through a common selection process but appointed to different armed forces, on the basis of a notification issued long after commencement of the selection process, depending on the fortuitous event of the date of joining service is arbitrary, discriminatory and violative.

17. Had the petitioners and others, who opted for the Border Security Force, known that by opting for the Border Security Force, they would have been denied the benefit of the Old Pension Scheme, they would perhaps have not opted for the Border Security Force.
18. In our view, basic terms and conditions of service, such as the right to receive pension upon superannuation, as applicable at the time of notification of the posts, cannot later be altered to the prejudice of the incumbents to the post, after commencement of the selection process.
19. One Parmanand and 24 others filed a writ petition being WP(C) No.3834/2013. The said writ petition was disposed of by a judgment and order dated 12.05.2015 of a Division Bench of

this Court. Relying on an earlier judgment of this Court dated 26.05.2011 in WP(C) No. 5400/2010 (*Avinash Singh Vs. Union of India and Others*) and in WP(C) No. 327/2012 (*Navin Kumar Jha Vs. Union of India and Others*), the Division Bench allowed the writ petition and directed that the petitioners, who had joined service after 01.01.2004 be given the benefit of the Old Pension Scheme.

20. In WP(C) No.3834/2013 (Parmanand Yadav and Others Vs. Union of India and others) the Division Bench held:-

“8. In the case of BSF, of which petitioners are enrolled members of the Force, letters offering appointment were delayed by three months, a fact admitted by the respondents, and as to be found in the DG BSF admitting said fact in the counter affidavit filed.

9. Thus, for parity of reasons, same relief as was granted to Naveen Kumar Jha and Avinash Singh must flow to the writ petitioners, and thus we adopt the reasoning in the two decisions, and hence we have reproduced the same hereinabove.

10. The petition is allowed issuing a mandamus to the respondents to treat the petitioners as a member of the pension scheme which was in vogue till December 31, 2003 and not to treat them as members of the new pension contributory fund scheme.”

21. In *Naveen Kumar Jha Vs. Union of India and Others* decided on 02.11.2012, a Division Bench of this Court had held:-

3. The Staff Selection Commission invited applications to fill up posts of Sub-Inspector in Central Para Military Forces and titled the selection process as „SSC Combined Graduate Level 2000“. The petitioner applied and took the examination. He cleared the written examination as also the Physical Efficiency Test.

4. Required to appear before a Medical Board for fitness to be ascertained, the petitioner was declared medically unfit as per medical examination conducted on February 04, 2002. Since the procedures of the law entitled the petitioner to seek a re-medical examination by being brought before a Review Medical Board and for which he had to file an appeal within 30 days of unfitness being intimated, on February 25, 2002 the petitioner submitted the necessary appeal. Unfortunately, for him he heard nothing from the respondents on the subject i.e. the date and the place where petitioner was required to be present to be re-examined by the Review Medical Board and in the meanwhile the candidature of others was processed. It was only on January 18, 2003 that the petitioner was intimated to be present before the Review Medical Board and the petitioner duly presented himself before the Board and upon examination was declared fit. By March 2003 others who were successful had joined the respective Para Military Force to which they were allocated to. The petitioner was called for interview on July 2003 and thereafter having cleared the interview was issued letter offering appointment as a Sub-Inspector in CRPF in April 2004. The petitioner thereafter successfully completed the induction training and was attached to the 72nd Bn.CRPF.

5. The problem which the petitioner has highlighted is of not only being placed junior to the entire batch which joined CRPF pursuant to the SSC Combined Graduate Level 2000 Examination but even junior to those who took the SSC Combined Graduate Level 2001 and SSC Combined Graduate Level Examinations held thereafter; the petitioner being placed at the top of the list of the 2004 year batch.

6. This has affected the petitioner adversely because Sub-Inspectors of his batch have earned promotions to the

rank of Inspector and are being considered for further promotion to the post of Assistant Commandant.

7. Though the petitioner has earned promotion to the post of Inspector but even in said rank has lost out in seniority and right to be considered along with his batchmates for promotion to the post of Assistant Commandant.

8. Another injury suffered by the petitioner is the change in the policy of the Central Government to do away with old Pension Scheme which automatically made eligible all those who joined Central Government prior to December 31, 2003. The petitioner has been held entitled to the new Pension Scheme.

9. With respect to the Pension Scheme it assumes importance to note that petitioner's batchmates were issued letters offering appointment in March 2003 and had petitioner likewise been issued a letter offering appointment, he too would have been a member of the old Pension Scheme. As a result of petitioner being offered employment in April 2004, he has perforce been made a member of the new Pension Scheme.

10. On the subject of delay in conducting Review Medical Boards, in the decision dated May 26, 2011 deciding WP(C) No.5400/2010 Avinash Singh vs. UOI & Ors., a Division Bench of this Court held, in para 17 to 20 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 circumstance 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.

19. Thus, petitioners would be entitled to their seniority as Assistant Commandant with respect to their batch-mates in the context of the merit position in the select panel. We make it clear, the seniority as Assistant Commandant of the entire batch would be a reflection of the merit position in the select list and not the date of joining.

20. It is trite that where a thing is deemed to come into existence everything which logically flows therefrom has to be followed and the imagination cannot boggle down. In other words, the effect of the petitioners' seniority being reckoned with reference to the select panel would mean that the petitioners would come at par with their brethren who joined on 02.11.2004. Since their brethren were granted 1 year qualifying service relaxation, petitioners would be entitled to the same benefit and additionally for the reason the next below rule requires that if a person junior in the seniority position acquires the necessary qualifying service, the person above has also to be considered for promotion."

11. On facts it needs to be noted that the seven petitioners of WP(C) No.5400/2010 had lost out on their seniority with reference to their merit position in the Select List due to delay in conducting their Review Medical Evaluation and in the interregnum their batchmates had joined ITBP.

12. On parity of reasoning and application of law the petitioner is held entitled to his seniority being refixed as a Sub-Inspector in CRPF with reference to his merit position at the SSC Combined Graduate Level 2000 Examination i.e. those who joined CRPF pursuant to the said examination in March 2003. The petitioner has already earned promotion to the post of Inspector and accordingly we direct that he would be entitled to seniority refixed in said rank with reference to his revised seniority position in the rank of Sub-Inspector, and this would mean that the petitioner would be considered for promotion to the post of Assistant Commandant as per the revised seniority list.

13. The respondents are therefore directed to revise the seniority position of the petitioner in the two ranks within a period of four weeks from today and thereafter consider the petitioner along with other eligible persons for promotion to the post of Assistant Commandant.

14. As regards wages, on the principle of not having shouldered responsibility for the higher post, we do not direct backwages to be paid.

15. On the subject of the petitioner being entitled to the old Pension Scheme, in similar circumstances, deciding WP(C) No.10028/2009 Amrendra Kumar vs. UOI & Ors., where the petitioner therein was also similarly deprived the opportunity to join with his batch on account of delay in conducting medical re-examination, the Court had directed that said writ petitioner would be entitled to the benefit of the old Pension Scheme which remained in force till December 31, 2003.

16. The petitioner would be entitled to similar benefit and accordingly the next mandamus issued is by way of a direction to the respondents to treat the petitioner as a member of the pension scheme which remained in vogue till December 31, 2003.”

22. It is true that in this case the appointment letters were issued in 2005. However, the petitioners had applied pursuant to the same advertisement as Parmanand and 24 others, who were granted the relief, and gone through the same selection process which commenced a few years before the New Pension Scheme was notified. The medical examination was also held within 31.12.2003, before the new scheme came into effect. Unfortunately, the appointment took time.

23. The issue of whether Sub Inspectors similarly circumstanced, as the petitioners, who had been cleared in medical examinations in 2003, but issued with appointment letters and joined the BSF in 2004 or 2005, could be denied pensionary benefits under the old pension scheme, which ended on 21.12.2003, was decided by a Division Bench of this Court in WP(C) No.5830/2015 (Shoorvir Singh Negi Vs. Union of India and others) heard with five other writ petitions.

24. By a judgment and order dated 17.09.2015, the Division Bench held:-

“As far as the claim for pensionary benefits based upon the old pension scheme which ended on 31.12.2003 is concerned, we are of the opinion that a somewhat different result would have to follow. Undoubtedly, all the petitioners were declared medically fit by 2003. However, they would not be issued with appointment letters and joined subsequently in 2004 or 2005. It is here that the observations in *Avinash Singh* (supra) quoted with approval in *Naveen Kumar Jha* (supra) become relevant. Although the petitioners were declared fit earlier – at least much before the cessation of the old pension rules, there was an administrative delay in the issuance of the appointment letter asking them to join training. In these circumstances, in the

interests of justice, we hold that they should be entitled to the benefits of the old pension scheme.”

25. In Shoorvir Singh Negi (Supra), the petitioners had claimed seniority as also pensionary benefits under the Old Pension Scheme as per the CCS (Pension) Rules 1972. While the prayer to seniority over persons who joined earlier, was disallowed, but the claim of those petitioners for pensionary benefits under the Old Pension Scheme, as per CCS(Pension) Rules 1972, was allowed.
26. In this case, the petitioners have not claimed seniority with retrospective effect. They have only claimed pensionary benefits, as per the Old Pension Scheme. The issue has been decided in favour petitioners by a Division Bench of this Court. Judicial propriety demands, as a Bench of coordinate strength, we should follow the judgment of the Division Bench in Shoorvir Singh Negi (Supra).
27. The respondents have filed counter affidavit to the writ petition, wherein it is stated that the new pension scheme was introduced

with effect from 01.01.2004 vide Government of India Notification dated 02.12.2003. Offer of appointment to other BSF Sub Inspectors appointed through the same examination were issued during the month of December, 2003, that is before commencement of new pension scheme, without mentioning the condition of new pension scheme, whereas, the petitioners herein were issued offers of appointment mentioning the condition that the new restricted defined contributory pension system would be applicable to them.

28. It has also been contended that this Court had by its order dated 12.02.2015 in Parmanand (supra) held that the benefits of the Old Pension Scheme were applicable only to those Sub Inspectors selected through CPOs Examination 2002, whose final result had been declared by Staff Selection Commission in the month of August, 2003 and letters of appointment issued during the month of December, 2003, that is prior to enforcement of the New Pension Scheme.

29. The judgment dated 12.02.2015, in Parmanand (supra) has been completely misconstrued. The judgment was rendered in the case of persons to whom appointment letters had been issued before 31.12.2003. The judgement does not restrict application of the old scheme only to those to whom joining letters were issued in December 2003.
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.
32. The respondents have also urged the point of delay on the part of the petitioners in approaching this Court and submitted that the writ petition be dismissed on that ground alone.
33. In support of their submissions, the respondent cited *U.P. Jal Nigam and Another Vs. Jaswant Singh and Another* 2006 (11) SCC 464, where the Supreme Court held that laches and delay were important factors that had to be considered by the Court before exercise of its discretionary power to grant relief under Article 226 of the Constitution of India. The Court further held that when a person was not vigilant of his rights, his writ petition might not be heard after a couple of years to

consider on the ground of whether the same relief should be granted to him, as was granted to a person similarly situated, who had been vigilant about his rights and had challenged his retirement, which was said to be made on attaining the age of 58 years.

34. The Supreme Court held that in determining, whether there had been such delay, would amount to laches, the points to be considered were acquiescence on the part of the petitioner, and any change of position that had occurred on the part of the respondent. The respondents were held to be guilty of laches, as they had acquiesced by accepting their retirement which they did not challenge in time. The Supreme Court held that if the writ petitioners had been vigilant, they would have filed writ petitions, as others did when they were made to retire on attaining 58 years of age. Relief was declined on the ground of delay.

35. The issue in U.P. Jal Nigam (supra) was, whether the employees could be retired on attaining the age of 58 years,

when State Government employees were allowed to continue till the age of 60 years. The Court found that they had already accepted their retirement. They had retired from service, and, therefore, relief was refused.

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 & Ors.*, AIR 1970 SC 769; *Collector, Land Acquisition, Anantnag & Anr. v. Mst. Katiji & Ors.*, AIR 1987 SC 1353; *Dehri*

Rohtas Light Railway Company Ltd. v. District Board, Bhojpur & Ors., AIR 1993 SC 802; Dayal Singh & Ors. v. Union of India & Ors., AIR 2003 SC 1140; and Shankara Co-op Housing Society Ltd. v. M. Prabhakar & Ors., AIR 2011 SC 2161)”

37. In H.D Vora v. State of Maharashtra & Ors. 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.

40. The writ petition is allowed. The respondent shall treat the petitioners as members of the Old Pension Scheme under the Central Civil Services (Pension) Rules 1972.

INDIRA BANERJEE, J

V. KAMESWAR RAO, J

March 27, 2017/ n