

\$~19 & 20

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

+ **W.P.(C) 6275/2016**

M V SHESHAGIRI ..... Petitioner

Through: Mr. Ankur Chhibber, Advocate.

versus

UNION OF INDIA AND ORS ..... Respondents

Through: Mr. Prasanta Varma, Senior Counsel  
with Mr. Debajyoti Behiria G. P. and  
Ms. Shalu Goswami, Advocates.

+ **W.P.(C) 6312/2016**

K BHASKARA RAO ..... Petitioner

Through: Mr. Ankur Chhibber, Advocate.

versus

UNION OF INDIA AND ORS ..... Respondents

Through: Ms. Bharathi Raju, CGSC with  
Ms. Namisha Gupta, Advocates for  
R-1 to R-3.

**CORAM:**

**JUSTICE S.MURALIDHAR**

**JUSTICE SANJEEV NARULA**

**ORDER**

%

**06.12.2018**

**Sanjeev Narula, J.:**

1. The present petitions under Article 226 of the Constitution of India seek a writ of mandamus, directing the Respondents to notionally re-fix the Petitioners' seniority by treating them appointed with effect from the date

their batch mates were appointed. The Petitioners also seek consequential benefits that would accrue on account of notional re-fixation of seniority, especially the benefit of the "old pension scheme".

2. Facts and prayers of both the petitions being more or less similar, the same are being decided by a common order.

### **Factual Background**

#### **W.P. (C) No. 6275/2016**

3. Staff Selection Commission (SSC) issued an advertisement for selection of Sub Inspectors (General Duty) through Central Police Organization (Sub Inspectors) Examination, 2002. The Petitioners applied for the aforesaid post and successfully qualified the written examination held on 12<sup>th</sup> January 2003. On 22<sup>nd</sup> May 2003, Respondents informed the Petitioner that he had been declared provisionally qualified to take the medical examination/interview. He appeared for the medical examination on the scheduled date, but was declared to be medically unfit due to "haemorrhoids with bow legs".

4. Dissatisfied with the findings of the Medical Board, the Petitioner got himself examined at Government Hospital, Nampally Hyderabad and obtained a certificate of physical fitness dated 28<sup>th</sup> June 2003 certifying him to be physically and mentally fit for the above position.

5. The procedure in law entitled the Petitioner to seek a Review Medical Board. He took benefit of the same and filed an appeal to the Review Medical Board within the prescribed time limit. The request of the

Petitioner along with similarly placed candidates was considered and he was directed to appear before the Review Medical Board at BSF Camp, Bangalore on 22<sup>nd</sup> December 2003. In the Review Medical Board, the Petitioner was found medically fit for the post. He was declared qualified and was subsequently interviewed on 26<sup>th</sup> April 2004.

6. After more than eight months from the date of the interview, the Respondents vide memorandum dated 18<sup>th</sup> January 2005 informed the Petitioner that he had been nominated to Central Reserve Police Force (CRPF). The dossier of the Petitioner was forwarded to the Commandant, CRPF. Petitioner was also intimated that on completion of the formalities, the offer of appointment shall be issued by CRPF. The Respondents took another four months to process the appointment and finally on 12<sup>th</sup> May 2005, Petitioner received the letter of appointment to the post of Sub Inspector (General Duty). He joined the training in May, 2005 and consequently, his seniority was fixed along with the batch of 2005. Whereas, Petitioner's batch mates who had been selected pursuant to the Central Police Organization (Sub Inspector) Examination, 2002 and had joined in the month of December 2003, got their seniority fixed with reference to their date of joining, in 2003.

7. On account of the above, the Petitioner has also not been able to avail the benefit of the "old pension scheme", applicable to officers who had joined the service on or before 31<sup>st</sup> December 2003. This pension scheme, as per the Petitioner, is more beneficial as opposed to the new contribution pension scheme which replaced the old pension scheme with effect from 1st January 2004. The Petitioner submitted a representation to the Respondents seeking

re-fixation of his seniority along with his batch mates and also requested for the benefit under the old pension scheme. The Petitioner also brought to the notice of the Respondents, a decision of this Court in *Naveen Kumar Jha v. Union of India 2012 SCC Online Del 5606*, where similarly placed government servants had been granted relief of seniority along with consequential benefits.

8. The Respondents declined to accept the request of the Petitioner. Aggrieved with the Respondents' inaction and refusal, the Petitioner has approached this Court.

**W.P. (C) No. 6312/2016**

9. The facts of this petition are similar to W.P. (C) No. 6275/2016. In this case, the Petitioner applied for the post of Sub Inspector (General Duty) in Central Para Military Organization, pursuant to an advertisement issued by the Staff Selection Commission (SSC) for selection to the said post through SSC Combined Graduate Level Examination, 2002.

10. The recruitment process commenced on 12<sup>th</sup> January 2003 with the Petitioner qualifying the written examination.

11. On 22<sup>nd</sup> May 2003, Respondents informed the Petitioner that he had been declared provisionally qualified to take the medical examination/interview. He appeared for the medical examination on the scheduled date but the Board declared him to be medically unfit due to "knock knees with sclerosis".

12. On 21<sup>st</sup> June 2003, within the prescribed time limit Petitioner filed an appeal to the Review Medical Board. The Petitioner did not receive any response on the appeal for a long time. After a delay of nearly six months, on 12th December, 2003, the Petitioner was called for the Review Medical Board to be held on 23rd December, 2003. In the Review Medical Board, the Petitioner was found medically fit for the post. Respondents declared the Petitioner qualified and called him for an interview on 26<sup>th</sup> April 2004.

13. In April 2005, nearly twelve months from the date of the interview, the Respondents forwarded the candidature of the Petitioner to the Inspector General of Police, CRPF. On 31<sup>st</sup> May 2005, Petitioner received an offer of appointment to the post of Sub Inspector (General Duty) and he joined the service on 6th July, 2005. Consequently, the seniority of the Petitioner was fixed along with the batch of 2005. In the meantime, final result of the other successful candidates (Petitioner's batchmates) was published and they joined different paramilitary forces in December, 2003 and their seniority was fixed with reference to their date of joining/training.

14. On account of the above, the Petitioner has not been able to avail the benefit of the old pension scheme applicable to officers who had joined the service on or before 31<sup>st</sup> December 2003. Petitioner's representation to the Respondents seeking a rectification of his seniority has been declined.

### **Analysis**

15. The Court has heard Mr. Ankur Chhibber learned counsel appearing on behalf of the Petitioners and Mr. Prasanta Verma learned senior government counsel appearing for the Respondents in W.P.(C) No. 6275/2016 and Ms.

Bharathi Raju, learned Central Government Standing Counsel appearing for the Respondents in W.P.(C) No. 6312/2016.

16. Learned counsel for the Petitioners urged that both the Petitions are covered by the decision of this Court in the case of *Naveen Kumar Jha* (supra). He argued that the factual backdrop in the present petitions is almost identical to the facts in the case of *Naveen Kumar Jha* (supra). He further submitted that Respondents are not disputing that there has been delay in the appointment of the Petitioners. This delay has occurred on account of several reasons for which the Respondents alone are to be blamed. Respondents delayed the Review Medical Examination, despite the Petitioners having filed an appeal within the time period prescribed. It took nearly six months (in both the writ petitions) for Respondents to intimate the Petitioners about the Review Medical Board. When the Petitioners appeared before the Review Medical Board, and were declared medically fit, the Respondents further caused a delay of four months in calling them for an interview. Still further delay occurred in processing their candidature for appointment. Respondents took nearly nine months in W.P. (C) No. 6275/2016 and twelve months in W.P. (C) No. 6312/2016, to forward the candidature of the Petitioners for appointment. As a result, Petitioners lost out on seniority as compared to their batchmates. The Petitioners are also agonized on account of the fact that as a result of delayed appointment they are not eligible to benefit from the old pension scheme that was discontinued w.e.f 1<sup>st</sup> January 2004. Since both the Petitioners were appointed after 31<sup>st</sup> December 2003 they are entitled to claim benefit under the "new pension

scheme". Petitioners' batch mates, on the other hand, who joined prior to 31<sup>st</sup> December 2003, have been given the benefit of the old pension scheme.

17. The counsels for the Respondents argued that the ratio of *Naveen Kumar Jha* (supra) is not applicable to the present petitions. The Respondents have also urged that Petitioners' seniority cannot be fixed prior to their birth in the cadre. In order to emphasize this point, the Respondents' counsels referred to a chart illustrating the comparison between the sequences of events in the present petition with those in the case of *Naveen Kumar Jha* (supra). We are however not impressed with this comparison. After carefully examining the facts in the case of *Naveen Kumar Jha* (supra) we find that indeed the factual position in the said case and in the present cases is almost identical. Each case has its own peculiar facts; however mere difference in the dates of the events would not render the ratio of a judicial precedent inapplicable. In present petitions, there has been a delay on the part of the Respondents in conducting the Review Medical Board. The Respondents in their affidavit have categorically stated as under:

"Aggrieved with the rejection of his candidature on medical grounds, he preferred an appeal for review medical examination within the prescribed time limit. The request of Petitioner along with other similarly placed candidates were directed to appear before the Review Medical Board at BSF Camp, Bangalore on 22-12-2013."

18. It is thus an admitted case of the Respondents that the request of the Petitioner for Review Medical Examination was made within the prescribed time limit. This warranted a quick and prompt action on their part. Respondents ought to have acted swiftly in order to ensure that the request

of the Petitioner is processed without delay. The delay in conducting of Review Medical Board; calling them for interview; processing their candidature; is clearly on account of Respondents' inaction. The delay in both the above noted cases can be appreciated from the following table:

|                                                         | <b><u>W.P. (C) No. 6275/2016</u></b>   | <b><u>W.P. (C) No. 6312/2016</u></b>          |                        |
|---------------------------------------------------------|----------------------------------------|-----------------------------------------------|------------------------|
| Examination                                             | CPO (Sub Inspectors) Examination, 2002 | SSC Combined Graduate Level Examination, 2002 |                        |
| Written Exam                                            | 12.1.2003                              | 12.1.2003                                     |                        |
| Informed to take Medical Exam                           | 22.5.2003                              | 22.5.2003                                     |                        |
| Declared medically unfit vide Medical Exam Report dated | 22.6.2003                              | 19.6.2003                                     |                        |
| Obtained Certificate of fitness                         | 28.6.2003                              | -                                             |                        |
| Appeal for Review Medical Board                         | Within 30 days                         | 21.6.2003                                     |                        |
| Called for Review Medical Board                         | 12.12.2003                             | 12.12.2003                                    | 6 months               |
| Review Medical Board                                    | 22.12.2003                             | 23.12.2003                                    |                        |
| Called for Interview                                    | 1.4.2004                               | 1.4.2004                                      | 4 months               |
| Interview                                               | 26.4.2004                              | 26.4.2004                                     |                        |
| Candidature forwarded                                   | 18.1.2005                              | _.4.2005                                      | 9 months and 12 months |
| Letter of appointment                                   | 12.5.2005                              | 31.5.2005                                     |                        |
| Date of joining                                         | _.5.2005                               | 6.7.2005                                      |                        |



19. The facts of the present case thus unequivocally establish that it is the Respondents who are to be blamed for depriving the Petitioners from joining the services of the Respondents along with their batch mates who had been successful under the respective examinations. Petitioners are certainly not at fault. It is also undisputed that Petitioners are losing on their seniority, as they were unable to join the training with their batchmates. The factors for the delay discussed above are squarely attributable to Respondents.

20. There are several other decisions of this Court, where the Petitioners who were similarly deprived of the opportunity to join with their batch mates for training, on account of delay in conducting Review Medical Examination, have been granted relief by this Court. It would thus be relevant to note few of such decisions being *Avinash Singh v Union of India* 2011 SCC OnLine Del 2432, *Gurnam Singh v Union of India* (2015) 217 DLT 586 (DB), *Rajendra Singh v Union of India* 240 (2017) DLT 576, *Durga Nandan Srivastava in W.P. (C) No. 4348/2014*, *Amarendra Kumar v Union of India* 2010 SCC OnLine Del 2565 and *Anjan Kumar Mandal v Union of India* 2017 SCC OnLine Del 12028.

21. We have considered the afore-noted judgments and note that this court has repeatedly held that in case the employer has caused delay in the joining of a candidate, the employee should not be deprived of his seniority. The facts of the present case are squarely covered by the aforesaid decisions of this Court as well as by the decision in *Naveen Kumar Jha* (supra).

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*

*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 31<sup>st</sup> December 2003.

25. Accordingly, the Writ Petitions are allowed, in the above terms.

26. No order as to costs.

**SANJEEV NARULA, J**

**S.MURALIDHAR, J**

**DECEMBER 06, 2018**

*nk*

