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

+ **W.P.(C) 267/2018 & C.M. Nos. 1088-90/2018**

UNION OF INDIA & ANR. Petitioners
Through: Mr. Arun Bhardwaj, CGSC with
Mr. Nikhil Bhardwaj, Advocate.

versus

PANKAJ KUMAR SINGH & ANR. Respondents
Through: Mr. Naresh Kaushik, Mr. Devik Singh
and Mr. Akash Malhotra, Advocates.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **11.01.2018**

1. The petitioner No.1/Ministry of Defence and the petitioner No.2/Directorate General of Naval Armament are aggrieved by the order dated 16.8.2016 passed by the Central Administrative Tribunal, allowing O.A. 1624/2016 filed by the respondent No.1 wherein he had prayed for extension of the benefit of the Old Pension Scheme (hereinafter referred to as “**the OPS**”) governed under the CCS Pension Rules, 1972.

2. The admitted facts of the case are that the respondent No.2/UPSC had held the Engineering Service Examination, 2001 wherein the respondent No.1 had applied and participated as a candidate. In May, 2002 the respondent No.2/UPSC had declared the final results and the name of the respondent No.1 was included in the list of selected candidates. Based on the results of the aforesaid examination, a total of five candidates including the

respondent No.1, were nominated by the Ministry of Railways for appointment in the Indian Naval Armament Services (in short '**the INAS**'). Out of the five candidates nominated by the Railway Board, three were issued letters of appointment on 09.8.2002 and they all joined service in October, 2003 whereas, the respondent No.1 and another successful candidate were issued the appointment letters only on 17.3.2004. After seeking extension of time, the respondent No.1 herein finally joined the service on 30.7.2004.

3. The grievance of the respondent No.1 as raised before the Tribunal is that the petitioners had acted in an arbitrary and discriminatory manner by denying him the benefits of the OPS governed by the CCS Pension Rules, 1972 and instead, had covered him under the New Contributory Pension Scheme (hereinafter referred to as "**the NPS**") that was introduced by the government and made effective from 01.01.2004.

4. The respondent No.1 pleaded before the Tribunal that had the Railway Board and the other govt. functionaries i.e., the District Collector acted with promptitude by conducting and forwarding the verification of his character and antecedents on time, he would have joined the services well before 01.1.2004, alongwith the other candidates selected contemporaneously, whose appointment letters were issued on 09.8.2002. However, due to the inordinate delay on the part of the Railways, the matter was kept pending and only when the reports were received from the District Collector on 04.3.2004, did the Railway Board issue his appointment letter on 07.3.2004. Claiming that the said delay cannot be attributed to him, the respondent No.1 approached the Tribunal stating that he has wrongly been denied the benefit of the OPS.

5. The petitioners had filed a counter affidavit before the Tribunal contesting the pleas taken by the respondent No.1 and had taken an objection with regard to the maintainability of the O.A. on the ground of limitation. It was averred that the respondent No.1 had filed a representation on 30.8.2004, for extension of the OPS, which was rejected by them on 26.4.2005, whereas the O.A. came to be filed by him only in the year 2014. Another ground taken by the petitioners to question the maintainability of the O.A. was that the respondent No.1 had failed to implead the Railways or the District Collector against whom allegations of delay were levelled by him.

6. On merits, the petitioners submitted that the case of the respondent No.1 was distinguishable, vis-a-vis the other candidates, who were successful in the very same examination. It was averred that three candidates were issued offers of appointment on completion of the pre-appointment formalities in the year 2003 whereas in the case of the respondent No.1, it took a longer time for completion of pre-appointment formalities and the offer of appointment was issued to him only on 17.3.2004, by which date the NPS had come into operation and therefore, the respondent No.1 cannot be governed by the OPS.

7. We have heard the learned counsel for the petitioners and perused the impugned order in the light of the pleadings before the Tribunal.

8. We may note at the outset that it has taken the petitioners almost one and a half year to approach this court to challenge the impugned order and that too only after the respondent No.1 had to file a contempt petition before the Tribunal, for failure on their part to implement the impugned order. The petitioners have not offered any explanation in the writ petition

for filing a belated petition.

9. It is argued by Mr. Arun Bhardwaj, learned counsel for the petitioners that the respondent No.1 had submitted a representation to the petitioners for seeking extension of the OPS in the year 2004, which was rejected vide order dated 26.4.2005 but no explanation was offered for the delay of almost 10 years in approaching the Tribunal. He states that the Tribunal has failed to appreciate that the O.A. filed by the respondent No.1 was patently barred by limitation and it ought to have been dismissed on this ground alone.

10. On merits, it is submitted on behalf of the petitioners that Rule 2 of the CCS Pension Rules, 1972 clearly stipulates that the said Rules will not be applicable to appointees on or after 01.1.2004 and the respondent No.1 having been appointed after the cut off date, was rightly extended the benefit of the NPS. To substantiate his plea on the aspect of delay, learned counsel relies on the decision of the Supreme Court in State of Karnataka & Ors. Vs. S.M. Katrayya & Ors. reported as **(1996) 6 SCC 267** and on the aspect of extension of the benefits of the OPS vis-a-vis NPS, reference has been made to the decision of a Division Bench of this Court in Shailender Kumar and Ors. vs. Delhi High Court (Through Registrar General) & Anr. reported as **(2012) 189 DLT 524**.

11. Coming first to the plea taken by learned counsel for the petitioners that the O.A. filed by the respondent No.1 ought to have been rejected on the ground of delay and laches, we may note that the Tribunal has dealt with the said objection in the impugned order and observed that the respondent No.1 had sought legal recourse only when the petitioners did not finalize his case despite the fact that the petitioner No.2/Director General of Naval Armament had itself considered his case and vide letter dated 27.8.2013,

forwarded his representations to the Naval Head Quarters with a recommendation and subsequently, a reminder dated 18.12.2014 was also sent by the petitioner No.2 to the Naval Head Quarters. It was only when the respondent No.1 did not receive any response from the petitioners that he was compelled to approach the Tribunal for relief in April, 2015. We are inclined to concur with the view taken by the Tribunal and are of the opinion that the delay on the part of the respondent No.1 in seeking legal recourse has been adequately explained and the respondent No.1 cannot be non-suited on this ground.

12. In any event, in a matter relating to extension of benefits of pension under one scheme or the other, the court must be mindful of the fact that the said benefit shall enure 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.

17. Accordingly, the present petition is dismissed *in limine*, along with the pending applications.

HIMA KOHLI, J

REKHA PALLI, J

JANUARY 11, 2018

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