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

+ **W.P.(C) 838/2016 & CM APPL. 3656/2016**

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI & ORS. Petitioners

Through: Mr.Zoheb Hossain, Addl. Standing
Counsel.

versus

AJAY KUMAR & ORS. Respondents

Through: Ms. Sahila Lamba, Advocate.

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+ **W.P.(C) 839/2016 & CM APPL. 3659/2016**

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI AND ORS Petitioners

Through: Mr.Zoheb Hossain, Addl. Standing
Counsel.

versus

VIJAY SINGH AND ORS Respondents

Through: Mr. M.K. Bhardwaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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13.09.2018

The grievance of the Government of National Capital Territory of Delhi (GNCTD) in these two petitions is that Central Administrative Tribunal (CAT) granted relief to the respondents, who claimed benefit of pre-revised pension scheme applicable to class of

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service they belonged to. It is a common ground of both the parties that the previously existing scheme – i.e. before 01.01.2004, entitled public servants to a monthly pension and other attendant terminal pension prescribed under the CCS (Pension) Rules, 1972 for payment of gratuity which was subsequently amended. The rationale for grant of relief by the impugned order was that the applicants (who were respondent in this case) had issued an advertisement through Delhi Subordinate Services Selection Board (DSSSB) in the year 2002 for various classes of posts. Common merit list was drawn pursuant to the recruitment process –sometime in 2003. Concededly, some of the applicants though senior and higher in the merit list were not issued appointment letter as they did not belong to the reserved communities in GNCTD. Subsequently, controversy arose whether status claimed by the Scheduled Caste/Scheduled Tribe (SC/ST) could be given to them since they did not belong to GNCTD and in some instances castes were not notified in GNCTD. Eventually, they were issued appointment letters but after 01.01.2004. The controversy as to whether they were entitled to be treated as SC/ST was resolved by Full Bench of this Court in *Deepak Kumar & Ors. vs. District and Sessions Judge, Delhi & Ors.*, (2012) 132 DRJ 169 (FB) and recently by a Constitution Bench in *Bir Singh vs. Delhi Jal Board*, 2018 SCC Online SC 1241.

The denial of parity with their juniors/batchmates *vis-a-vis* applicability of old pension scheme became the subject matter of proceedings before CAT where they were successful. Learned
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counsel for the GNCTD urges that CAT's decision – which has relied upon previous judgment of this Court ought to be set aside since so called juniors/batchmates were in fact appointees prior to the applicants. It is contended that since the appointment of the applicants took place after the appointed date i.e.01.01.2004; they could not claim any benefit to prescribed individual pension rule. Learned counsel relied upon a decision of Division Bench in *Ashok Mudgal vs. Govt. of NCT of Delhi & Ors.*, 2010 SCC Online Del 2357-W.P. (C) 12246/2009 (decided on 14.07.2010).

This Court is of the opinion that the present writ petitions are without merit. The very same issue which is sought to be agitated by the GNCTD was subject matter of two Division Bench judgment in *Naveen Kumar Jha vs. Union of India & Ors.*, 2012 SCC Online Delhi 5606 -W.P. (C) 3827/2012 (decided on 02.11.2012) and subsequently *Ajit Kumar Choudhary vs. Union of India & Ors.*, -W.P.(C) 4496/2014 (decided on 21.07.2017). In *Naveen Kumar Jha* (supra), the Court firstly granted the benefit of seniority on the basis of common merit-list published by the recruitment agency even though the individual was appointee of later date after 01.01.2004. The Court also held that the old pension scheme would apply, on the ground that the petitioner “was deprived the opportunity to join to his batch on account of delay in conducting the medical re-examination”. Likewise, in *Ajit Kumar Choudhary* (supra), this Court held that the W.P.(C) Nos.838/2016 & 839/2016

“department’s position was illogical and irrational given that the petitioners have been granted seniority and granted parity from their date of actual joining. Their specific grievance was denial of the old pension scheme which was specifically referred to in the final order of this Court. The refusal to grant the old pension scheme is untenable in law.”

As far as judgment in *Ashok Mudgal* (supra) is concerned, the Court notices at the outset that the facts of the same were entirely different from the present case. *Ashok Mudgal* (supra) was not a case of common recruitment by common meritlist where seniors were appointed later rather they were the employees of the public agency which was transferred - from a non-government department to a government department in public interest.

In these circumstances, it is quite correctly held that employees upon their transfer could only claim the benefits – available as on the date of transfer and not prior to it.

In view of foregoing reasons, we are of the opinion that there is no occasion to interfere with the impugned order of CAT.

The writ petitions along with pending applications are accordingly dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

SEPTEMBER 13, 2018/ssc

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