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

Date of decision: 12th February 2020

+ W.P.(C) 1550/2020

NARENDRA KUMAR Petitioner

Through: Mr. D.P. Sharma, Advocate

versus

UNION OF INDIA THROUGH THE SECRETARY & ORS.

..... Respondents

Through: Mr. Jaswant Rai Agarwal, Advocate
with Ms. Gargi Khanna, &
Ms. Kanika Mittal, Advocate for R-1
to R-3.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

CM APPL.5405/2020 (exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 1550/2020

The present petition is directed against order dated 15.07.2019 whereby OA No.3761 of 2018 filed by the petitioner has been dismissed ; and order dated 07.11.2019 passed in Review Application No.194/2019 by

which the review application filed by the petitioner also stands rejected.

2. In this case the petitioner had applied for and appeared in the Combined (Graduation Level) Examination, 1999 conducted by the Staff Selection Commission for appointment to the post of Divisional Accountant and Junior Accountant/Auditor/UDC as per the vacancies intimated by various departments of the Union. The petitioner qualified in the said examination ; and thereupon his case was recommended for appointment in the month of April-May 2002 ; but he was offered appointment only on 04.06.2004. Although the dossier of the petitioner was initially sent by the SSC to the Joint Director, Ministry of Information & Broadcasting on 12.08.2002 for offer of appointment but it was returned in the month of May, 2004 after a lapse of about 22 months. The dossier was again sent to the Principal Accounts Office, Ministry of Urban Development, New Delhi for offer of appointment and the petitioner finally joined on 25.02.2005.

3. In view of the above, according to the petitioner there is unexplained delay, the effect of which is that the petitioner has been deprived of the benefit of the Old Pension Scheme under CCS (Pension) Rules, 1972 and he has been made to come under the New Pension Scheme introduced *w.e.f.* 01.01.2004, while some of his batch-mates who joined prior to 01.01.2004 and also other batch-mates who joined after 01.01.2004 have been given benefit of the Old Pension Scheme.

4. Since the Tribunal was of the view that the delay in appointment had been satisfactorily explained, the Tribunal did not entertain the OA. Paras 9 and 10 of the order of the Tribunal reads as under:-

"9. After having perused the aforesaid judgments as relied upon by the learned counsel for the applicant, it is observed that the same are based on a specific set of facts and circumstances and the same are not applicable to the facts of this case. As such, the same are not relevant to the present case. However, this Court is aware of the recent decision of the Hon'ble Delhi High Court in a Batch of cases (WP(C) Nos.6525/16, 10141/16, 5904/17, 6585/16 and 3956/17) decided vide common judgment dated 11.9.2017 had considered the similar issue and the petitioners in the said case also placed reliance on the earlier decisions of the Delhi High Court as relied upon by the applicant of this case and observed as under:-

"16. Selection process does take time for varied and different reasons. It is not the case of the petitioners that there was a deliberate delay in the selection process. There could be a variety of administrative and logistical reasons or causes for the time taken to complete the selection process and issue the appointment letters, which we do not find is per se inordinate and prolonged. Today after nearly 14 years, it would be impossible and unfair to ask the respondents to offer and give cogent explanation as to the reason why the selection and issue of appointment letters took the time that it did. The petitioners have remained silent during the intervening period and had apparently accepted the position that they would be governed by the New Pension Scheme. There were separate advertisements, each initiating a separate selection process. Expeditious and early selection and appointment of candidates subsequent to the recruitment rally held in Punjab and Haryana cannot be a ground to urge that there was discrimination and violation of parity. On being asked, counsel for the petitioners have accepted and admitted that the petitioners have not challenged or questioned the seniority of those selected and appointed in the

recruitment rally held in Punjab and Haryana. The date of joining, as per Rules, is the criterion to determine inter se seniority. The date of initiation of the recruitment process is not the criterion. This being the position, the ratio in Sanjay Kumar Thakur & Qrs. (supra) and Shailendra Kumar & Qrs. (supra) would be applicable. The other set of decisions, which have been distinguished above, would not apply. In the said cases some officers from the same batch of candidates, i.e. same selection process had joined before 31.12.2003, but the "petitioner" for fortuitous reasons had joined later. Thus some candidates from the same selection process were given benefit of the Old Pension Scheme, but other candidates who could not join earlier for no fault of theirs, were denied the benefit and were treated as members of the New Pension Scheme. This is not the position in the present case.

17. However, as a matter of abundant caution we would observe and clarify that in case any of the selected candidates belonging to the same selection batch have been granted benefit of the Old Pension Scheme, which the petitioners have been denied, the petitioners would be entitled to raise the said claim before the authorities and, if denied the said benefit, can approach the appropriate forum for relief. The aforesaid observations would not confer any right on the petitioners who are not being discriminated, in the sense that they have been denied the benefit of the Old Pension Scheme, whereas others appointed and selected through the same selection process, i.e. pursuant to the same advertisement and recruitment rally, have been covered under the old pension scheme.

18. With the aforesaid observations and caveat, the writ petitions are dismissed without any order as to costs."

10. It is further relevant to mention that SLP (C) No.26016/2018 against the aforesaid order of the Hon'ble Delhi High Court in one of the Batch cases, i.e., WP(C) No.6585/2016 had been preferred by the petitioners therein and the same is pending adjudication before the Hon'ble Supreme Court and no stay had been granted in the said matter by the Apex Court."

5. In the above backdrop, the learned counsel for the petitioner submits that the petitioner should not be penalized for the delay in his appointment considering that he had appeared in and cleared the examination in 1999 ; was recommended for appointment as early as in the year 2002 ; but his dossier was returned and re-sent only in the year 2004.

6. Learned counsel for the respondent has opposed this petition, submitting that there is no infirmity in the order of the Tribunal. He submits that there is also unexplained and gross delay in the petitioner approaching the Tribunal. He submits that the petitioner signed the appointment letter in token of his acceptance of the terms of appointment as far back in the year 2004.

7. We have heard the learned counsel for the parties and have perused the record.

8. In our view, the case of the petitioner is fully covered by the decision rendered by this court in the batch of cases being, W.P.(C) Nos.6525/2016, 10141/2016, 5904/2017, 6585/2016 and 3956/20147 decided by common judgment dated 11.09.2017, the relevant paragraphs of which have been extracted above.

9. There is no dispute about the petitioner having signed and accepted

the appointment letter as far back as in the year 2004, which contained clause 6, which we reproduce below:-

"(vi) He/She will be governed by New Restructured Defined Contribution Pension System as per M/o Finance D/o Economic Affairs (ECB & PR Division) Notification dated 22.12.2003 circulated vide CGA's O.M. No.1(7)(2)/2003/TA/616 dated 29.12.2003."

In view of which the petitioner cannot now be heard to claim coverage under the Old Pension Scheme.

10. That apart, the petition suffers from serious and unexplained delay and laches. It cannot be said that the petitioner was unaware that he would be governed by the New Pension Scheme for all these years.

11. Thus, we find no merit in the petition ; and the same is hereby dismissed.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

FEBRUARY 12, 2020/vk