

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 21.11.2022

+ **W.P.(C) 7619/2021**

SATYA DEV PRAJAPATI AND ORS. Petitioners

versus

**DELHI HIGH COURT THROUGH ITS
REGISTRAR GENERAL AND ANR.** Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Ankur Chhibber and Mr Anshuman
Mehrotra, Advocates.

For the Respondents : Ms Rashmi Chopra with Mr Puneet Chopra,
Ms Vatsala C. Chaturvedi, Advocates for R-
1/Delhi High Court.
Mr Nirvikar Verma, Advocate for R-2/UOI.

AND

+ **W.P.(C) 14275/2021**

PANKAJ SHUKLA AND ORS. Petitioners

versus

**DELHI HIGH COURT THROUGH ITS
REGISTRAR GENERAL AND ANR.** Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Ankur Chhibber and Mr Anshuman
Mehrotra, Advocates.

For the Respondents : Ms Rashmi Chopra with Mr Puneet Chopra,
Ms Vatsala C. Chaturvedi, Advocates for R-
1/Delhi High Court.
Mr Harish V. Shankar, CGSC with Mr
Jitendra Kumar Tripathi, Government
Pleader for R-2.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners have filed these petitions, *inter alia*, impugning an Office Memorandum dated 17.02.2020 (hereafter referred to as '**the impugned OM**'), whereby the coverage under the CCS (Pension) Rules, 1972 (hereafter '**the Old Pension Scheme**') was confined to only those candidates who were recruited against vacancies arising on or before 31.12.2003 and the selection results were declared on or before 01.01.2004. All other employees appointed after the cut-off date, including the petitioners, are not covered under the Old Pension Scheme but would participate in the National Pension Scheme (hereafter referred to as '**NPS**'), which is a contributory scheme.

2. The petitioners are aggrieved as they have been denied the benefit of being covered under the Old Pension Scheme. The petitioners had made their representations to the Establishment of this Court (hereafter '**the DHC**') which were rejected on the recommendations of the concerned Committee of the DHC. The petitioners have, therefore, impugned the order rejecting their representations as well.

3. The petitioners claim that since their applications for employment with the DHC were submitted pursuant to the advertisements inviting applications issued prior to 31.12.2003 and the

selection process had commenced prior to the said date, they are entitled to be covered under the Old Pension Scheme. They contend that denial of this benefit on the ground that the appointment letters were issued after the cut-off date of 31.12.2003 is arbitrary and unreasonable.

4. The petitioners have assailed the impugned OM on the ground that it is arbitrary and contrary to the earlier decisions rendered by this Court. The questions that arise for consideration in these petitions are: whether the denial of benefit under the Old Pension Scheme to the petitioners is arbitrary and unreasonable; whether the impugned OM is contrary to the earlier decisions rendered by this Court; and if so, whether the impugned OM is liable to be set aside and/or the conditions for relaxation are required to be expanded so as to cover other candidates as well.

Factual Context

5. The petitioners (seven in number) in W.P.(C) 7619/2021 had applied for being appointed to the post of Personal Assistants pursuant to an advertisement issued by the DHC on 07.06.2003, inviting applications from Indian Nationals for filling up existing vacancies and preparing a panel of candidates for appointment to the post of Personal Assistant in the pay scale of ₹5500-175-9000 plus allowances as are sanctioned from time to time. The petitioners were found eligible and, by letters dated 20.11.2003, were called to appear for the skill examination, which included shorthand and a typing test scheduled on 14.12.2003. The results of the same were declared in the month of

February 2004. The petitioners were successful in clearing the said test and were admitted to *viva voce*/interview. DHC issued call letters dated 05.03.2004, calling upon the petitioners to appear for the interview/*viva voce* scheduled to be held on 24.03.2004 and 25.03.2004. The petitioners successfully qualified the *viva voce*/interview and the final results were declared in the month of May 2004. The petitioners were, thereafter, issued appointment letters during the period May 2004 to August 2004. The petitioners in this case joined the services of this court on various dates in the month of July 2004.

6. The petitioners in W.P.(C)14275/2021 (twenty-three in number) had applied to the post of Junior Judicial Assistant/Restorer with the DHC pursuant to an advertisement issued on 10.10.2002. In terms of the said advertisement, applications were invited from Indian Nationals for appointment to the post of Junior Judicial Assistant/Restorer in the pay scale of ₹4500-125-7000. The selection process entailed a written test based on multiple choice question pattern. Those candidates who qualified the said written test were required to appear for a skill test (typewriting test in English). The candidates clearing the skill test were required to appear for an interview.

7. The written examination was held on 29.06.2003 and the results were declared on 02.12.2003. The skill test (typing test) was held on 21.12.2003. The candidates who had cleared the skill test were called for interviews, which were scheduled between 15.04.2004 to 28.04.2004. The final results were declared on 16.08.2004. Thereafter, appointment letters were issued to the successful candidates including

the petitioners. The petitioners joined the services on various dates between August 2004 to August 2005.

8. On 23.08.2003, the Central Government approved a proposal to introduce a new restructured contributory pension scheme for new entrances to the Central Government services, except the armed forces. The same was notified by a Notification dated 22.12.2003. In terms of the said Notification, the new system would be mandatory for all new recruits to the Central Government from 01.01.2004. It was also expressly provided that the existing provisions of defined benefit pension and GPF would not be available to the new recruits in the Central Government service.

9. It is stated that certain petitions were filed by various employees who had participated in the recruitment process that had commenced prior to 31.12.2003 but were appointed subsequently. Many of the said petitions, filed under Article 226 of the Constitution of India, were allowed. The Special Leave Petitions preferred against the said petitions were also dismissed.

10. On 17.02.2020, the Central Government issued the impugned OM granting an opportunity to all employees whose recruitment results *“were declared before 01.01.2004 against vacancies occurring on or before 31.12.2003”* to opt for the Old Pension Scheme. The said option was available as a one-time measure to be exercised by the employee on or before 31.05.2020.

11. The petitioners in W.P.(C) 7619/2021 submitted a representation on 01.12.2020 to the DHC requesting that they be extended the benefit of coverage under the Old Pension Scheme. This representation was rejected by a communication dated 23.03.2021. Similarly, the petitioners in W.P.(C) 14275/2021 also filed their respective representations on various dates, which were rejected by communications dated 19.04.2021.

Submissions

12. Mr. Chibber, learned counsel appearing for the petitioners in these petitions, contended that in view of the decisions rendered by this Court in *Naveen Kumar Jha v. Union of India and Ors.*¹ as followed in various other decisions, the question, whether the employees who were recruited pursuant to the advertisement issued prior to 31.12.2003, are eligible for coverage under the Old Pension Scheme, is no longer *res integra*. He relied on the decisions in *Parma Nand Yadav and Ors. v. Union of India and Ors.*²; *Inspector Rajendra Singh and Ors. v. Union of India and Ors.*³; *Tanaka Ram and Ors. v. Union of India and Ors.*⁴ and *HC/RO Ravikant Chaudhary and Ors. v. Union of India and Ors.*⁵; *Shyam Kumar Choudhary and Ors. v. Union of India and Ors.*⁶; *Niraj Kumar Singh and Ors. v. Union of India and Ors.*⁷;

¹ W.P.(C) 3827/2012, decided on 02.11.2012

² W.P.(C) 3834/2013, decided on 12.02.2015

³ W.P.(C) 2810/2016, decided on 27.03.2017

⁴ W.P.(C) 6680/2017, decided on 12.02.2019

⁵ W.P.(C) 10189/2016, decided on 12.02.2019

⁶ W.P.(C) 1358/2017, decided on 09.04.2019

⁷ W.P.(C) 13129/2019, decided on 13.12.2019

*Chander Veer Singh and Ors. v. Union of India and Ors.*⁸; *Dr. Davinder Singh Brar v. Union of India and Ors.*⁹; *Ithape Pandit Kisanrao and Ors. v. Union of India and Ors.*¹⁰ and *Vipul Pandey and Ors. v. Union of India and Ors.*¹¹; *SI/MIN M.R. Gurjar and Ors. v. Union of India and Ors. and Other Connected Matters*¹²; *Jaswinder Singh and Ors. v. Union of India and Ors.*¹³; *Bharat Singh and Ors. v. Union of India*¹⁴ and *Ramesh Chand Meena and Ors. v. Union of India and Ors.*¹⁵.

13. He submitted that although some of the initial judgments were based on the peculiar facts of those cases, but the law on the subject was further expanded by successive decisions and all employees recruited pursuant to a recruitment process commenced prior to 31.12.2003, were held to be covered under the Old Pension Scheme. He submitted that the decision in *SI/MIN M.R. Gurjar and Ors. v. Union of India and Ors. and Other Connected Matters*¹² was rendered solely on the basis that the advertisements pursuant to which the petitioners in those cases were recruited, had been issued prior to the New Pension Scheme becoming applicable. He also pointed out that Special Leave Petitions preferred against the judgment were rejected.

⁸ W.P.(C) 11169/2019, decided on 16.12.2019

⁹ W.P.(C) 756/2020, decided on 28.01.2020

¹⁰ W.P.(C) 6548/2020, decided on 06.11.2020

¹¹ W.P.(C) 6989/2020, decided on 06.11.2020

¹² W.P.(C) 8208/2020 and other connected matters, decided on 15.01.2021

¹³ W.P.(C) 1569/2021, decided on 15.02.2021

¹⁴ W.P.(C) 5079/2020, decided on 02.12.2021

¹⁵ W.P.(C) 9098/2020, decided on 02.12.2021

14. He contended that the impugned OM is contrary to the decisions rendered by this Court and therefore, was liable to be set aside. He submitted that this Court had examined the question whether the candidates, who had applied for recruitment pursuant to advertisements issued prior to 31.12.2003, could be denied the benefit of the then prevailing pension scheme (Old Pension Scheme) and held that such denial was not permissible. In view of the said decision, the respondent's policy decision to cover only some of the employees that had participated in the recruitment process, pursuant to the advertisements commenced prior to 31.12.2003, under the Old Pension Scheme, would also suffer from the vice of arbitrariness.

15. Ms. Rashmi Chopra, learned counsel appearing for the DHC, countered the aforesaid submissions. She submitted that each of the said decisions referred to by Mr. Chibber were distinguishable on the facts of those cases. She submitted that all of the said cases were pertaining to recruitment in the Central Paramilitary Services, where appointees from the same batch had been treated differently. The courts were persuaded to direct extension of coverage under the Old Pension Scheme, essentially, to ensure parity amongst persons who had participated in the same recruitment process.

16. She referred to the decisions of this Court in *Shailendra Kumar and Ors. v. Delhi High Court (Through Registrar General) and Anr.*¹⁶; *Sanjay Kumar Thakur and Ors. v. North Delhi Municipal*

¹⁶ W.P.(C) 2520/2012, decided on 03.05.2012

*Corporation of Delhi and Ors.*¹⁷; *Union of India and Ors. v. Narayan Rao Battu and Ors.*¹⁸ in support of her contention that the petitioners had been selected on the basis of the results of the interview/*viva voce* conducted after the cut-off date of 31.12.2003, and were appointed thereafter. Therefore, they were not covered under the Old Pension Scheme.

Reasons and Conclusion

17. At the outset, it is necessary to note that the petitioners do not assail the New Pension Scheme as being arbitrary or unreasonable. The entitlement to the post-retirement benefits, including pension, is a matter pertaining to the terms and conditions of the services. This is a matter between the employer and the employee. Subject to the governing laws, an employer is entitled to fix the emoluments on which it offers employment. The employee can accept the employment on the terms as offered or prior to his joining, negotiate for better terms. In any view, once an employer and employee agree to the terms, it is not open for either of them to thereafter question the same. This is, obviously, subject to the exception that the terms and conditions do not conform to any statute or applicable law.

18. As noted above, in the present case, the petitioners do not question the validity of the New Pension Scheme. It is not their case that the said scheme is contrary to any statute or law in force. They,

¹⁷ *W.P.(C) 5828/2016, decided on 01.12.2016*

¹⁸ *W.P.(C) 10306/2016, decided on 27.03.2019*

essentially, seek coverage of the Old Pension Scheme as the same is perceived as more beneficial. Once it is accepted that the New Pension Scheme is not invalid and the Central Government is entitled to offer employment on those terms, it follows that the petitioners, who were appointed on the terms and conditions as applicable on the date of their appointment, cannot question the same except on the ground that the same is contrary to any provisions of law.

19. According to the petitioners, denying the coverage of the Old Pension Scheme is discriminatory and falls foul of Article 14 of the Constitution of India. This Court finds no merit in the said contention. None of the employees, whose selection process was completed after 31.12.2003, have been extended the benefit of the Old Pension Scheme. Undisputedly, it is open for the Central Government to fix a cut-off date for the purposes of changing the terms and conditions relating to pension. Clearly, there is no reason to hold that the Central Government cannot fix the terms on which it hires employees.

20. Since pension is part of the terms and conditions of the services, the date on which an employee accepts his employment is relevant and it would be necessary to fix a cut-off date for that purpose. Considering that the persons who have accepted the employment have done so by accepting the terms and conditions of their service, which does not include entitlement of pension under the Old Pension Scheme, this Court finds no ground to fault the decision of the Central Government to offer a different pension scheme after the cut-off date.

21. The question whether the employees, who had joined the services pursuant to the appointment letters issued after 01.01.2004, are entitled to seek the benefit of the Old Pension Scheme was considered by a Coordinate Bench of this Court in ***Shailendra Kumar and Ors. v. Delhi High Court (Through Registrar General) and Anr.***¹⁶. The petitioners in that case sought appointment to the post of Lower Divisional Clerk (LDC) in the District and Sessions Court, Delhi. They joined their services in the month of February 2004. They claimed benefit of coverage under the Old Pension Scheme on the ground that the letters of offer of appointment had been issued prior to 31.12.2003 and they had accepted the same. They had joined their services after receipt of the verification report in respect of their characters, which were received some time in the months of January and February 2004.

22. They had, in support of their case, relied on the earlier decisions of this Court in ***Government of NCT of Delhi and Anr. v. Dr. Pawan Kumar N. Mali and Ors.***¹⁹. The said case related to claims made by certain medical officers for being covered under the Old Pension Scheme. They had been appointed pursuant to recruitment process for filling up thirteen posts of medical officers. The results were declared and they were selected prior to 31.12.2003. They had accepted their appointment and also undergone the medical examination prior to the said cut-off date. Three out of the thirteen medical officers had joined the department on 20.01.2003. However, ten medical officers, who had filed the petition before the Central Administrative Tribunal, could not

¹⁹ *W.P.(C) 5983/2010, decided on 03.02.2011*

join the services in view of a *status quo* order dated 23.01.2003, passed by this Court in a petition filed by certain doctors who were appointed on contractual basis and were seeking regularization. The selected medical officers could join the services only after the interim order was vacated on dismissal of those petitions.

23. The Division Bench in *Shailendra Kumar and Ors. v. Delhi High Court (Through Registrar General) and Anr.*¹⁶ held that the decision in the case of *Government of NCT of Delhi & Anr. v. Dr. Pawan Kumar N. Mali & Ors.*¹⁹ was not applicable. This Court reasoned that in that case, the employees could not join the services because of the order passed by the Court and not on account of any negligence or lapse on the part of the respondents. This Court also applied the principle that no one can be prejudiced by an order of the Court. Thus, whilst the respondents (employees), in the case of *Government of NCT of Delhi & Anr. v. Dr. Pawan Kumar N. Mali & Ors.*¹⁹, were entitled to coverage under the Old Pension Scheme, no such benefit could be extended to the petitioners. Accordingly, this Court dismissed the petition filed by *Shailendra Kumar and Ors. v. Delhi High Court (Through Registrar General) and Anr.*¹⁶. The relevant extract of the said decision reads as under:

“6. However, in the case before us, there was no order passed by any Court restraining the respondents from making appointments to the post of LDC in District & Sessions Court. They were in a position to join service soon after their medical examination and police verification was complete. On the other hand, in the case of Dr. Pawan Kumar N. Mali (*supra*), relief was granted to

the petitioners, primarily applying the principle that the order of the Court cannot prejudice anyone. Had there been no stay order in that case, the respondents in that case would have joined service prior to 01.01.2004, since not only the offer of appointment had been made to them, even their medical examination had been conducted well before the cut-off date of 01.01.2004. They were prevented from joining service, only because of stay order granted by the Court. On the other hand, none of the petitioners before this Court could have been allowed to join service prior to 01.01.2004 since the character verification in respect of all the three petitioners was received after 31.12.2003. This judgment, therefore, cannot be applied to the case before us.

7. This is not the case of the petitioners that their inability to join on or before 31.12.2003 was attributable to any negligence or lapse on the part of the respondents. If inability of the petitioners to join service on or before 31.12.2003 is not attributable to the respondents or to any order passed by a Court and was only on account of the time taken by the Hospital/Police in conducting medical examination and police verification, the petitioners cannot claim parity with the petitioners in the case of **Dr. Pawan Kumar N. Mali** (*supra*). For the reasons given in the preceding paragraphs, we find no merit in the writ petition and the same is hereby dismissed.”

24. This Court is of the view that the decision in **Shailendra Kumar and Ors. v. Delhi High Court (Through Registrar General) and Anr.**¹⁶ had put the controversy to rest. In cases where a candidate joins the employment after the cut-off date (after 01.01.2004), he would not be covered under the Old Pension Scheme. This is, of course, subject to certain exceptions. In cases where a candidate is unable to join the service prior to 01.01.2004 for unjustifiable reasons attributable to the

respondents, he may be entitled to be covered under the Old Pension Scheme. Similarly, in cases where some candidates from the same batch are able to join their services prior to 31.12.2003, whilst the appointment of the other candidates has been delayed due to no fault on their part, they may be entitled to claim parity, in respect of the terms and conditions of their services, with those who joined the services prior to 31.12.2003. They would, on principles of parity, be entitled to the coverage under the Old Pension Scheme. However, in absence of any such condition, a candidate, who joins his services after the cut-off date, would not be entitled to claim benefit of the Old Pension Scheme. Merely because the recruitment process had commenced before 31.12.2003 but culminated after the said cut-off date, is not a ground for an employee to claim that the terms and conditions of his services should be the same as applicable on the date when the recruitment process was commenced and not the date on which he accepted the appointment.

25. In *Sanjay Kumar Thakur and Ors. v. North Delhi Municipal Corporation of Delhi and Ors.*¹⁷, this Court, following the earlier decision in the case of *Shailendra Kumar and Ors. v. Delhi High Court (Through Registrar General) and Anr.*¹⁶, rejected a similar petition filed by Laboratory Assistants employed with the North Delhi Municipal Corporation. In that case, the said Corporation had requisitioned Delhi Subordinate Services Selection Board on 27.12.2002, to fill-up various posts including vacant posts of Laboratory Assistants. The advertisement inviting applications for

filling-up the said vacancies was published on 05.06.2003. The written examination for selecting the candidates was conducted on 19.10.2003 and the results were declared on 29.10.2003. The dossier of the selected candidates was sent by the Delhi Subordinate Services Selection Board to the North Delhi Municipal Corporation on 06.11.2003. The offer of appointment was made to the selected candidates on 19.03.2004 and they joined the posts of Laboratory Assistants during the period between July 2004 to October 2004. The Court held that the delay in the issue of appointment letters was neither *mala fide* nor intentional. By the time the files were processed and appointment letters were issued, the New Pension Scheme became applicable and the petitioners (in that case) were not entitled to be covered under the Old Pension Scheme.

26. A similar view was expressed by this Court in the case of ***Union of India and Ors. v. Narayan Rao Battu and Ors.***¹⁸. In that case, the Court allowed the appeal preferred by the Union of India against the decision of the Central Administrative Tribunal holding that respondent no.1 (applicant before the Central Administrative Tribunal) was entitled to the benefit under the Old Pension Scheme as the advertisement issued, pursuant to which he had applied, specifically stated that the benefit of added years of service as admissible under Rule 30 of the CCS (Pension) Rules, 1972 was applicable and therefore, it was apparent that he was entitled to the benefit of the Old Pension Scheme. The Tribunal had reasoned that “*denying the benefit of old pension*

scheme to him (the applicant) would amount to changing the rules of the game in the midst of selection process and cannot be permitted.”

27. This Court did not agree with the aforesaid view and held as under:

“14. We have carefully considered the submissions of the learned counsels for the parties and, as stated in our order dated 27.03.2019, we are not at all inclined to accept the reasoning of the learned Tribunal. When the admitted case of the parties is that the respondent was appointed on 25.02.2005, by which time the new pension scheme was already in effect—and a policy decision had already been taken to make the said scheme applicable to all incumbents joining government service on/after 01.01.2004, the respondent cannot claim the right to be covered by the old pension scheme, merely because the vacancy against which he was appointed was initially advertised at a time when the old pension scheme was in force. In our view, the Tribunal, has failed to take into account that the terms ‘vacancy year’, ‘advertisement’, ‘selection’, and ‘appointment’ connote widely different meanings, and the date of vacancy or of selection cannot be equated with the date of appointment. An appointment is made only after the entire process of selection has been fully concluded.

15. We are of the opinion that once the new pension scheme unambiguously and specifically provided that all incoming office bearers, whose date of appointment is on/after 01.01.2004, would be governed by the new pension scheme, no reference can be made to either the date of vacancy, or the date of advertisement. For the applicability of the pension scheme, it is only the date of appointment which is relevant and must be taken into account, not the dates of vacancy or advertisement, as has been sought to be contended by the learned counsel for the respondent. Therefore, we find no merit in the submission

of the learned counsel for the respondent that as the vacancy pertained to the year 2002, the respondent ought to be governed by the old pension scheme.”

28. This Court is of the view that the present case is squarely covered by the aforesaid decisions.

29. It is also necessary for this Court to refer to the decisions relied upon by the petitioners. The earliest decision which is relevant to the controversy is that of *Amrendra Kumar v. Union of India & Ors.*²⁰ In that case, the petitioner had applied for appointment to the post of Sub-Inspector (GD) in the Central Police Organization pursuant to an advertisement issued by the Staff Selection Commission in the year 2002. He was successful in the written examination. Thereafter, by a letter dated 07.03.2003, he was called to appear for the Physical Examination Test on 03.04.2003. He was successful in that as well. He was called to present himself for his medical examination scheduled to be held on 04.06.2003. He was also informed that if he was found medically fit, he would be eligible to appear for an interview scheduled to be conducted on 05.06.2003. He was medically examined on 04.06.2003 and was also interviewed for the post. He was issued a letter dated 24.11.2003, informing him of his provisional selection for appointment to the post of Sub-Inspector (GD) in the CRPF. However, this letter also indicated that, his appointment was subject to a medical fitness examination, to be conducted by the appropriate medical authority on his reporting to the training centre. The petitioner reported

²⁰ *W.P.(C) 10028/2009, decided on 02.08.2010*

to the Group Centre, CRPF, Pinjore on 22.12.2003 and his medical examination was conducted on 24.12.2003. However, things did not go smoothly thereafter. Apparently, his chest X-ray could not be done on account of non-availability of X-ray Film/Report. He requested in vain that he be permitted to get his chest X-ray done privately. The petitioner's radiological examination was conducted in the month of April 2004 and he was declared medically fit on 27.04.2004. Thereafter, a formal letter was issued on 06.05.2004. It was the petitioner's case that he had been discriminated against as there were at least five other candidates who had been appointed without conducting their radiological examination. The Court also noted that the petitioner was treated as an employee of the CRPF as he continued to reside in their mess awaiting his formal appointment. In the facts of this case, the Court held that the petitioner had joined the duty on 22.12.2003 and directed that a fresh letter of appointment be issued, informing him of his appointment with effect from the said date, that is, 22.12.2003. It was also directed that all consequential benefits would be available to him. This is not a case where an employee, who was appointed after the cut-off date, was extended the benefit of the Old Pension Scheme; it was a case where the employees' appointment was held to be effective prior to the cut-off date of 31.12.2003. This decision is of no assistance to the petitioner.

30. Mr. Chibber had relied heavily on the decision of a Division Bench of this court in *Naveen Kumar Jha v. Union of India and Ors.*¹. The said decision was rendered on 02.11.2012. At the outset, it is

important to note that this decision was subsequent to the decision rendered in *Shailendra Kumar and Ors. v. Delhi High Court (Through Registrar General) and Anr.*¹⁶, which was delivered on 03.05.2012.

31. The said case related to the appointment to the post of Sub-Inspector in the Central Paramilitary Force. The petitioner in that case had applied for the said post and had cleared the written examination as well as the physical efficiency test. He was declared medically unfit on the basis of the medical examination conducted on 04.02.2002. He had filed an appeal to the Review Medical Board. On 18.01.2003, he was informed to appear before the Review Medical Board and he complied. He was examined and was declared fit. However, in the meantime, by the month of March 2003, other candidates from the same batch, who were selected, had joined the paramilitary forces allocated to them. The petitioner was called for the interview in the month of July 2003 and the letter offering him appointment as a Sub-Inspector in the CRPF was issued in the year of 2004. Clearly, the petitioner was prejudiced by the delay in conducting the review by the Review Medical Board. His batchmates had joined their services prior to him. He had lost out on his seniority as well as the consequent promotions. Whilst his batchmates were covered under the Old Pension Scheme, the petitioner had lost out on being covered under the Old Pension Scheme as well.

32. Given that the respondents (in that case) were responsible for the delay in holding the Review Medical Board, the Court found that the petitioners could not be prejudiced by the same. Accordingly, the Court held as under:

“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.”

33. It is important to note that in its decision, the Court had referred to its earlier decision in *Avinash Singh v. Union of India and Ors.*²¹. The petitioners in the said case sought parity in seniority on the basis of their merit amongst their batchmates. The relevant extract of the said decision is set out below:

“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

²¹ W.P.(C)5400/2010, decided on 26.05.2011

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.”

34. The controversy in *Avinash Singh and Ors. v. Union of India and Ors.*²¹ did not relate to the applicability of the Old Pension Scheme. It is apparent that the decisions in the case of *Avinash Singh and Ors. v. Union of India and Ors.*²¹ and *Naveen Kumar Jha v. Union of India and Ors.*¹ are based on the principle of parity between candidates from the same batch. Discriminating between employees from the same batch would offend Article 14 of the Constitution of India. The Court was of the view that there could be no discrimination *inter se* the candidates of the same batch merely on account of delay or fortuitous circumstances, for which the candidates were not responsible.

35. None of these two decisions were founded on the principle that the terms and conditions of the services, as applicable on the date of the commencement of the recruitment process, were sacrosanct and the candidates participating in the recruitment process were entitled to those terms. This principle is not well founded and finds no acceptance in the case of *Naveen Kumar Jha v. Union of India and Ors.*¹.

36. The case of *Parma Nand Yadav and Ors. v. UOI and Ors.*² related to recruitment pursuant to an advertisement issued by the Staff

Selection Commission in the Employment News published on 09.11.2002 - 15.11.2002, to fill-up the post of Sub-Inspectors in the four paramilitary forces [Border Security Force (BSF), Central Industrial Security Force (CISF), Central Reserve Police Force (CRPF) and Indo Tibetan Border Police (ITBP)]. The result of the selection was declared on 28.07.2003. Depending on the option exercised by various candidates for the services as well as the merit positions, candidates were allocated to various paramilitary forces. The appointment letters in respect of those candidates, who were allocated BSF, were issued in the month of December 2003. In case of other paramilitary forces, letters of offer were issued in the month of October 2003. The petitioners in that case were issued letters offering appointment after a delay of three months. In the given facts, the Court held that the decision in the case of *Naveen Kumar Jha v. Union of India and Ors.*¹ and *Avinash Singh and Ors. v. Union of India and Ors.*²¹ was applicable and for the reasons stated in the said decisions, the petition was allowed. The operative part of the said decision reads as under:

“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.”

37. In *Inspector Rajendra Singh and Ors. v. UOI and Ors.*³, the advertisement for recruitment was issued by the Staff Selection Commission in the Employment News of 09.11.2002-15.11.2002. The competitive examination for recruitment in the paramilitary forces

(BSF, CISF, CRPF and ITBP) was held on 12.01.2003. The petitioners were successful in the competitive examination and were called to undergo the physical efficiency test. They were, thereafter, directed to appear for medical examination before the Medical Board on various dates from the months of April to June 2003. Petitioner no.1 was declared medically unfit and he appealed to the Review Medical Board. The appointment letters to various candidates were issued on various dates. Most of them were issued prior to 31.12.2003. The Sub-Inspectors selected to serve with the BSF were directed to join in the month of January 2004. Resultantly, they were deprived to the benefit of the Old Pension Scheme. Those petitioners who had appealed against the decision of the Medical Board were directed to appear before the Review Medical Board after six months of applying for a review. They were declared fit and were called to appear for the interview before the Staff Selection Commission on 22.04.2004 and were finally issued letters offering appointment in the month of March 2005, that is, after a delay of eleven months. The Court held that if there was delay in declaration of the results or issuance of letters of appointment, the incumbents are not to suffer. The Court also held that “*there can 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*”. The Court referred to the earlier decisions in the cases of **Naveen Kumar Jha v. Union of India and Ors.**¹ and **Parma Nand Yadav and Ors. v. UOI and Ors.**²

38. As is apparent from the above, none of the aforesaid decisions is an authority for the proposition that the terms and conditions of the services, as applicable on the date of advertisements for recruitment, would necessarily apply.

39. In a later decision rendered on 12.02.2019, a Division Bench of this Court disposed of two petitions: *Tanaka Ram and Ors. v. Union of India and Ors.*⁴ and *HC/RO Ravikant Chaudhary and Ors. v. Union of India and Ors.*⁵ The petitioners in those cases had applied for recruitment in BSF pursuant to an advertisement issued in the month of August 2003. The Court noted that a Notification dated 04.08.2003 was issued by the Ministry of Home Affairs directing the Director General, BSF to complete the entire recruitment process by 31.10.2003 so that the selected candidates could be dispatched to the training centres before 15.12.2003. The petitioners were issued call letters for joining services in the month of February 2004. The Court found that there was a delay on the part of the respondents. The Court noted that the Central Government, Ministry of Home Affairs had issued an office memorandum accepting the delay on their part and extending the benefit of being covered under the Old Pension Scheme on that basis to various candidates and had referred to the decision of this Court in the case of *Parma Nand Yadav and Ors. v. UOI and Ors.*² Notwithstanding that the letters of appointment had been issued in the month of February 2004, the Court held that the benefit of the Old Pension Scheme was required to be extended to the petitioners. This was for the reason that the BSF itself had accepted that such benefit was required to be

extended to those who had been selected in the exam conducted in the year of 2003. The operative part of the said decision is set out below:

“17. In other words, the BSF itself has accepted that the benefit of the decision in *Parmanand Yadav (supra)* and the option to continue the Old Pension Scheme should be extended to all those who had been selected in the exam conducted in 2003 but were only issued call letters in January or February, 2004.

18. For the above reasons, the Respondents are directed to extend the benefit of the Old Pension Scheme to all the Petitioners in the present petitions and pass consequential orders within a period of eight weeks from today.”

40. In *Shyam Kumar Choudhary and Ors. v. Union of India and Ors.*⁶, this Court referred to the decision in the case of *Tanaka Ram and Ors. v. Union of India and Ors.*⁴ and held that the benefit of the Old Pension Scheme is required to be extended to those who had been selected in the examination conducted in the year of 2003. In *Shyam Kumar Choudhary and Ors. v. Union of India and Ors.*⁶, the Court also found that the reason for the petitioners not joining the services prior to month of January 2004, was solely attributable to the respondents. The Court articulated the reasons for allowing the petitions in the following words:

“5. The issue is no longer res integra. In the case of certain constables of the BSF, this Court by its judgment dated 12th February, 2019 in *Tanka Ram v. Union of India 2019 (174) DRJ 146 (DB)* allowed the prayer of those Petitioners and permitted them to avail of the benefit of the Old Pension Scheme. It was held that the option to continue the Old Pension Scheme should be extended to

all those who had been selected in the examination conducted in 2003, but were issued call letters in only in January or February, 2004.

6. In the present case also, the reason the Petitioners not joining prior to 1st January, 2004 is entirely due to the Respondents. The Petitioners cannot be deprived of the benefit of the Old Pension Scheme, as they qualified even prior to the notification of the New Pension Scheme.

7. For the above reasons, the petition is allowed and direction is issued to the Respondents to extend the benefit of the Old Pension Scheme to each of these Petitioners and pass consequential orders within a period of eight weeks from today.”

41. In a subsequent decision in *Niraj Kumar Singh and Ors. v. Union of India and Ors.*⁷, the Division Bench, following its earlier decisions in *Naveen Kumar Jha v. Union of India and Ors.*¹, *Parma Nand Yadav and Ors. v. UOI and Ors.*², *Tanaka Ram and Ors. v. Union of India and Ors.*⁴ and *Shyam Kumar Choudhary and Ors. v. Union of India and Ors.*⁶, allowed the said petition. This Court also allowed a similar petition in the case of *Chander Veer Singh and Ors. v. Union of India and Ors.*⁸ in almost identical terms as the decision in *Niraj Kumar Singh and Ors. v. Union of India and Ors.*⁷ The case of *Dr. Davinder Singh Brar v. Union of India and Ors.*⁹ was also disposed of on a similar reasoning.

42. Similar writ petitions, *Ithape Pandit Kisanrao and Ors. v. Union of India and Ors.*¹⁰ and *Vipul Pandey and Ors. v. Union of India and Ors.*¹¹ were disposed of by a common order dated 06.11.2020 by

observing that the cases were covered by the earlier decision in *Shyam Kumar Choudhary and Ors. v. Union of India and Ors.*⁶.

43. This Court also disposed of a batch of sixteen similar petitions, *SI/MIN M.R. Gurjar and Ors. v. Union of India and Ors. and Other Connected Matters*¹², filed by the petitioners who were Personnel Below the Officer Rank (PBOR) in Paramilitary Forces (BSF, CISF, CRPF and ITBP), by a common order dated 15.01.2021. The Court found that these cases were covered by the earlier decision in the case of *Shyam Kumar Choudhary and Ors. v. Union of India and Ors.*⁶

44. Mr. Chibber had laid much emphasis on the said judgment and had drawn attention to the observations of the Court to the effect that the petitioners could not be deprived of the benefit of the Old Pension Scheme, having regard to the fact that the advertisements/notifications were issued in the months of September 2003 and June 2003. Paragraph nos. 13 and 14 of the said order are relevant and are set out below:

“13. Having regard to the fact that in the present batch of cases also the advertisement/notification was issued in September, 2003 and June, 2003 i.e. prior to coming into force of the present contributory pension scheme on 22nd December, 2003, this Court is of the view that petitioners cannot be deprived of the benefit of the Old Pension Scheme.

14. This is more so when the batchmates of the petitioners are getting this benefit under various judgements passed by this Court.”

45. It is clear from the above that whilst the Court had observed that the advertisements / notifications for recruitment had been issued prior

to 31.12.2003, the Court had also noted that the batchmates of the petitioners had been granted the benefit of the Old Pension Scheme. The reading of the judgment also clearly indicates that it is founded solely on the earlier decisions of this Court in *Shyam Kumar Choudhary and Ors. v. Union of India and Ors.*⁶, *Niraj Kumar Singh and Ors. v. Union of India and Ors.*⁷ and, *Tanaka Ram and Ors. v. Union of India and Ors.*⁴

46. It is material to note that the decision in the case of *Sanjay Kumar Thakur and Ors. v. North Delhi Municipal Corporation of Delhi and Ors.*¹⁷ and of *Union of India and Ors. v. Narayan Rao Battu and Ors.*¹⁸ had not been discussed in any of the cases cited by the petitioners. Further, none of the decisions except the decision in *Tanaka Ram and Ors. v. Union of India and Ors.*⁴ was referred to in the decision of this Court in *Shailendra Kumar and Ors. v. Delhi High Court (Through Registrar General) and Anr.*¹⁶ In *Tanaka Ram and Ors. v. Union of India and Ors.*⁴, this Court had distinguished the decision in the case of *Shailendra Kumar and Ors. v. Delhi High Court (Through Registrar General) and Anr.*¹⁶ on the ground that the BSF had itself accepted the decision in the case of *Parma Nand Yadav and Ors. v. UOI and Ors.*² and had extended the benefit of the Old Pension Scheme to the petitioners. Paragraph 14 of the order, which sets out the reasons why the decision in the case of *Shailendra Kumar and Ors. v. Delhi High Court (Through Registrar General) and Anr.*¹⁶ was held inapplicable in the facts of that case reads as under:

“14. The Court finds that in *V. Ramana Murthy*, the Division Bench of this Court did not take note of the order dated 13th January, 2016 issued by the BSF itself accepting the decision in *Parmanand Yadav*. By issuing the said order dated 13th January, 2016, the BSF was accepting that the delay in issuing the offers of appointment was for reasons not attributable to *Parmanand Yadav* and others similarly situated but on account of the Respondents. That factual situation made the decision in *Shailender Kumar v. DHC (supra)* referred to in *V. Ramana Murthy (supra)* inapplicable.”

47. It is clear from the above analysis that the petitioners rely upon cases that follow the decision in the case of *Naveen Kumar Jha v. Union of India and Ors.*¹, which in turn referred to the decision in the case of *Avinash Singh and Ors. v. Union of India and Ors.*²¹ As noted above, the decision in *Naveen Kumar Jha v. Union of India and Ors.*¹ was based on the principle that there could be no discrimination between a batch of candidates that participated in the given recruitment process. On the principles of parity, the Court did not accept that the benefits of the Old Pension Scheme would be available to some of the candidates and not to others for no reasons attributable to them. It is also material to note that all of the cases referred to by the petitioners were essentially cases pertaining to recruitment to the paramilitary forces. The controversy in these cases had arisen largely on account of a delay in the petitioners joining their services either because the letters of joining had been issued later or a delay in the completion of the procedure for their medical fitness, which had placed them in a disadvantageous position *vis-a-vis* other similarly placed candidates. It was also found that there was a difference in the dates of issuing

appointment letters to candidates based on the paramilitary service to which they were appointed.

48. In *Tanaka Ram and Ors. v. Union of India and Ors.*⁴, the Court was persuaded to allow the petition also on the reason that the BSF had acknowledged the fault on its part in processing the applications and had extended the benefit to certain candidates who had been appointed after the cut-off date.

49. This Court is unable to accept that any of the aforesaid decisions is an authority for the proposition that the date of the advertisements inviting applications for appointment to various posts would be determinative of the terms and conditions of service applicable to the appointees; or that the decision of the Central Government to fix a cut-off date of appointment in joining employment for implementing the change of pension policy is arbitrary, unreasonable and falls foul of Article 14 of the Constitution of India. Absent any agreement to the contrary, the terms and conditions of service, as in vogue on the date when the parties (employer and employee) enter into the contract of employment, would be applicable and not on the date when the selection process commences. In the present case, the petitioners cannot complain of any discrimination; the petitioners have not been treated differently to the candidates from the same batch. Thus, none of the decisions, as cited by the petitioners, are applicable in the facts of these cases.

50. Before concluding, it is also relevant to refer to the impugned OM. The relevant extract of the same is set out below:

“3. From the representations of the Government employees and the references received from Ministries/Departments, it has been observed that in many of the cases referred to this Department, selection process (including written examination, interview and declaration of result) for recruitment had been completed before 01.01.2004 but the employee joined the Government service on or after 01.01.2004. A few illustrations where the selection was finalized before 01.01.2004 but actual joining took place on or after 01.01.2004 are as under:

(i) The result for recruitment was declared before 01.01.2004 but the offer of appointment and actual joining of the Government servant was delayed on account of police verification, medical examination etc.;

(ii) Some of the candidates selected through a common selection process were issued offers of appointments and were also appointed before 01.01.2004 whereas the offers of appointment to other selected candidates were issued on or after 1.1.2004 due to administrative reasons/constraints including pending Court/CAT cases.

(iii) Candidates selected before 01.01.2004 through a common competitive examination were allocated to different Departments/organization. While recruitment process was completed by some Department(s) / organizations on or before 31.12.2003 in respect of one or more candidates, the offers of appointment to the candidates allocated to the other Departments/organization were issued on or after 01.01.2004.

(iv) Offers of appointment to selected candidates were made before 01.01.2004 with a direction to join on or after 01.01.2004.

(v) Offers of appointment were issued to selected candidates before 01.01.2004, and many/most candidates joined service before 01.01.2004. However, some candidate(s) were allowed extension of joining time and they joined service on or after 01.01.2004. However, their seniority was either unaffected or was depressed in the same batch or to a subsequent batch, the result for which subsequent batch was declared before 01.01.2004.

(vi) The result for recruitment was declared before 01.01.2004 but one or more candidates were declared disqualified on the grounds of medical fitness or verification of character and antecedents, caste or income certificates. Subsequently, on review, they were found fit for appointment and were issued offers of appointment on or after 01.01.2004.

In all the above illustrative cases, since the result for recruitment was declared before 01.01.2004, denial of the benefit of pension under CCS (Pension) Rules, 1972 to the affected Government servants is not considered justified.

4. The matter has been examined in consultation with the Department of Personnel & Training, Department of Expenditure and Department of Legal Affairs in the light of the various representations/references and decisions of the Courts in this regard. It has been decided that in all cases where the results for recruitment were declared before 01.01.2004 against vacancies occurring on or before 31.12.2003, the candidates declared successful for recruitment shall be eligible for coverage under the CCS(Pension) Rules, 1972. Accordingly, such Government servants who were declared successful for recruitment in the results declared on or before 31.12.2003 against vacancies occurring before 01.01.2004 and are covered under the National Pension System on joining service on or after 01.01.2004, may be given a one-time option to be covered under the CCS(Pension) Rules, 1972.

This option may be exercised by the concerned Government servants latest by 31.05.2020.

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7. It is clarified, that the above option would be available to only those Government servants who were declared successful for recruitment before 01.01.2004, against vacancies pertaining to the period prior to that date. This option shall, however, not be available to the Government servants appointed on or after 01.01.2004 if they fall in any of the following categories:

(i) Government servants whose names were included in a panel of selected candidates before 01.01.2004 for recruitment against vacancies occurring on or after 01.01.2004 and were, accordingly, recruited on or after 01.01.2004.

(ii) A Government servant whose name was included in a panel of selected candidates prepared before 01.01.2004 for vacancies arising before and after 01.01.2004 but was actually appointed after 31.12.2003 against a vacancy arising on or after 01.01.2004.

(iii) Government servants who were selected against vacancies pertaining to the period prior to 01.01.2004 on the basis of an advertisement/notification issued before 01.01.2004 or a written examination/interview held before 01.01.2004 but results for recruitment were declared on or after 01.01.2004.

(iv) Government servants who joined on or after 01.01.2004 after they were granted extension of joining time on their own request and, in accordance with the instructions issued by the Department of Personnel & Training, their seniority was depressed on account of such extension of joining time to a batch for which the result for recruitment was declared on or after 01.01.2004.

51. It is apparent from the above that the Central Government had issued the impugned OM to address some of the representations received from the government employees. The Central Government had thought it fit to also extend the benefit of the Old Pension Scheme to those employees, where the selection results (for filling up vacancies that had arisen) were declared before 01.01.2004, but they had been denied the coverage under the Old Pension Scheme on account of issuance of the letters offering appointment.

52. This Court is unable to accept that the impugned OM falls foul of the principles of law as accepted by this Court in any of the decisions cited by the petitioner. On the contrary, the impugned OM eliminates the possibility of discrimination, where candidates who have been selected through a single selection process are treated differently solely, for the reason that they had joined on different dates, for reasons not attributable to them.

53. The petitions are unmerited and are, accordingly, dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

NOVEMBER 21, 2022
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